

OMAHA TRIBAL CODE (2013)

TITLE 12. OMAHA YOUTH

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Source: Omaha Tribal Council Resolution No. 02-116 (8-27-02).

CHAPTER 1. GENERAL PROVISIONS

SECTION 12-1-1. Purpose

The purpose of this Title is threefold. The primary purpose is to provide for the protection of children under the jurisdiction of the Tribe. Specifically, to ensure that the appropriate level of care and guidance, which will serve the spiritual, emotional, mental, and physical welfare of such children, is provided to them. It is deemed that the best interest of the children are the best interests of the Omaha Tribe of Nebraska.

The second purpose of this Title is to provide for those children in need of supervision, those children whose behavior and deportment threaten their individual personal growth and well-being, or the structure of their family structure, without rising to the level of delinquency.

The final purpose of this Title is to identify and define acts of juvenile delinquency and to provide for those rehabilitative structures that both benefit the child and serve to protect the Tribe from youthful offenders whose actions threaten the community and Tribe as a whole until such time as they may be successfully rehabilitated and reincorporated into the Tribe.

This Title is also intended to provide procedures for securing the Omaha Tribe's jurisdiction over children who are members of the Tribe or who are eligible for membership in the Tribe as the subject of a state child custody proceeding as defined by the Indian Child Welfare Act.

Underlying the purposes of these laws are some fundamental guiding principals. To strengthen family ties; to preserve and strengthen the child's cultural and tribal identity; to secure for every child removed from his home that care, control, and guidance as nearly equivalent to that which he should be given by his parents; to help the child develop into a responsible, well-adjusted adult; to improve any conditions or home environment which may be contributing to the child's delinquency; and to protect the peace and security of the tribal community, and its individual residents from child abuse and neglect. And, lastly to provide for those rehabilitative and deterrent measures designed to help guide those youth whose behaviors injure themselves or the community while balancing the needs of the community and Tribe.

SECTION 12-1-2. Definitions

(a) "Abandoned" means the failure of the parent to maintain "any" contact with a child. Failure to maintain a parental relationship with a child without just cause for a period of one year shall constitute prima facie evidence of abandonment. Willful failure to have any contact for a period of six months shall constitute prima facie evidence of abandonment.

(b) "Abused or neglected Child" is a child as defined in Section 12-6-2 of this Title.

(c) "Adjudication" means the legal process, as delineated later in this Title, by which the court finds that the facts alleged in a petition have or have not been proven.

(d) "Adjudicatory Hearing" is a hearing at which the adjudication is conducted according to the relevant evidentiary standard.

(e) "Adult" for the purposes of this Title, is a person eighteen years of age or over, except any person under twenty-one years of age who is under the continuing jurisdiction of the court or who is before the court for an alleged delinquent act committed before the person's eighteenth birthday or who has otherwise been emancipated by the Court. A minor may be considered to have a status equivalent to that of an adult for the limited purposes of admitting or denying a Petition under this Title, consenting to or being consulted

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on issues of child placement, if the minor is the biological parent of a child who is the subject of a Youth Court action.

- (f) "Advisory Hearing" is an initial hearing conducted by the court to inform the child and the child's parent(s), guardian(s) or custodian(s) of their statutory and constitutional rights.
- (g) "Child" is a person who is under the age of eighteen (18) years.
- (h) "Child in need of supervision" is a child as defined in Section 12-7-2 of this Title.
- (i) "Court" means the Omaha Tribe of Nebraska Tribal Youth Court.
- (j) "Custodian" is any person, or legal entity, who has legal custody of a child under tribal law or state law or to whom temporary physical custody, care, and control has been lawfully transferred.
- (k) "Delinquent act" means an act, which, if committed by an adult, is designated a crime under this Title 5 of this Title or Title 18 U.S.C.
- (l) "Department of Child Protection Services" is the Tribal Department of Child Protection Services.
- (m) "Desertion" means that a parent, guardian or other custodian has placed a child or children in the care of another, with or without their knowledge, for more than ten (10) consecutive days without making arrangements for their support or providing appropriate legal authorization for the party caring for the child or children to act for the benefit of the child or children which specifically includes the legal authorization to sign documents as a guardian for medical, educational or other services required by the child or children. This does not apply to one parent leaving the child with another biological parent.
- (n) "Detention" is the temporary custody of a child in a secured physically restricting facility.
- (o) "Dispositional Hearing" is a hearing after an adjudicatory hearing, at which the Tribe has met its burden of proof and the Court has made a finding that the allegations contained in the Petition are true, with the purpose of the Court rendering a final decision in the case. Such hearing may be held immediately following the adjudicatory hearing or may be delayed by the Court to a later time definite and certain, within ninety (90) days of the adjudicatory hearing, unless the court finds that good cause exists to continue the case for up to an additional ninety (90) day period.
- (p) "Extended family member" is a person who has reached the age of eighteen and who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, step-parent or a person who has adopted the child through formal legal means, this shall also include members of the minor child's band or clan.
- (q) "Foster Care" is any action removing a child from his parents or custodian for temporary placement in a foster home or institution or the home of a guardian or where the parent or custodian cannot have the child returned upon demand, but where parental rights have not been terminated.
- (r) "Guardian" is a person other than the child's parent who is by law responsible for that child.
- (s) "Involuntary Placement" is the temporary custody placement of a child by a person authorized by law to place children without the consent of the child's parent or custodian.
- (t) "Juvenile offender" is a child who is alleged to have committed a delinquent act "and has not been adjudicated to have committed said act".
- (u) "Least restrictive alternative" this term means the least disruptive method of achieving "the best interests of a child"; the restrictions placed on the child must be reasonably related to the Court's objectives and must be the least restrictive way of feasibly achieving that objective.
- (v) "Parent" is any biological parent or parents of a child or any person who has lawfully adopted a child, including adoptions under tribal law. It does not include unwed fathers where paternity has not been acknowledged or established, or parents whose parental rights have been terminated.

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(w) "Placement" is the temporary placement of a child in the physical, but not legal custody, of an individual or agency pending a final determination of where the child shall reside on a permanent basis.

(x) "Protective Supervision" is a legal status created by court order under which an alleged or adjudicated abused or neglected child is permitted to remain in the home of the child's parents, guardian, or custodian or is placed with a relative or other suitable person and supervision and assistance is provided by the court, Department of Child Protection Services, or other agency designated by the Court.

(y) "Time" In computing any time prescribed under this Title of the Code, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a Tribal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a Tribal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and Tribal holidays shall be excluded in the computation.

(z) "Termination of Parental Rights Proceeding" means any action resulting in the termination of the parent-child relationship.

(aa) "Tribe" means Omaha Tribe of Nebraska.

(bb) "Verbatim Record" means any method of recording, transcription, or dictation including mechanical and/or electronic means.

(cc) "Voluntary Placement" means an action removing a child from his home and placing the child in the temporary custody of another either by the parent or by a person authorized by law to place children with the consent of the child's parent, guardian, or custodian.

SECTION 12-1-3. Jurisdiction

The Tribal Youth Court has original jurisdiction over all matters under this Title which involve children who are members of the Tribe or who are eligible for membership in the Tribe or those children who are members, or eligible for membership in another Federally recognized Indian Tribe and who reside on or may be found within the territorial boundaries of the Omaha Tribal Reservation.

CHAPTER 2. DEPARTMENT OF CHILD PROTECTION SERVICES

SECTION 12-2-1. Responsibility

The Department of Child Protection Services (CPS) shall be under the authority of the Tribe. The Department of Child Protection Services (CPS) shall provide support to those law enforcement agencies tasked with the enforcement of all laws relating to the welfare of children, including assisting sworn Law Enforcement Officers when the officers remove children from a parental or custodial home. This shall include laws related to abuse and neglect, and all other laws designed to protect and assist children and shall take the initiative in securing enforcement of laws for the protection of children where no adequate provision is made for such enforcement. CPS shall also provide services as ordered by the Omaha Tribal Youth Court and such other voluntary services as may be available.

SECTION 12-2-2. Rules and Regulations

The Omaha Tribal Counsel, or its designated representative, shall be the final authority promulgating rules and regulations for The Department of Child Protection Services. The Department of Child Protection Services shall operate under this Title and such other rules and regulations as may be promulgated for the enforcement of child welfare laws including standards for child care agencies, foster care standards and licensing requirements, adoption services, alcohol/drug counseling services, foster care payments and any other rules, consistent with these laws, which are necessary for carrying out the purposes of this Title.

SECTION 12-2-3. Foster Care Licensing

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The Tribe, through the Department of Child Protection Services, may issue tribal licenses for foster care homes. Licensing requirements and standards shall be set by the Department of Child Protection Services but shall at a minimum include:

- (a) Cleanliness standards;
- (b) Water and light standards;
- (c) Health standards;
- (d) Occupancy standards;
- (e) Provisions for medical and dental care;
- (f) Provisions for food, furnishings, clothing, and necessities;
- (g) Standards for individuals licensed as foster care parents; and
- (h) Fire standards.

SECTION 12-2-4. Authority to Remove Children.

Child Protective Services workers, or other members of the Department, shall have no authority to remove children not under their custody from parental or custodial homes. The decision to remove a child must be made by a sworn member of Omaha Tribal Law Enforcement based upon the Officer's independent judgment.

CHAPTER 3. INDIAN CHILD WELFARE ACT REQUIREMENTS

SECTION 12-3-1. Purpose

The purpose of this Chapter is to ensure compliance with and implement procedures to facilitate the requirements and spirit of the Federal Indian Child Welfare Act. Recognizing that the Federal Indian Child Welfare Act does not apply to the actions of the Tribe or its sovereign Court the Omaha Tribe nevertheless recognizes the importance of Act and the spirit of the Act; therefore, the Omaha Tribe hereby delineates standards by which the Omaha Tribe upholds the spirit of the Federal Act. In addition, Omaha Tribal Indian Child Welfare Act provides procedures whenever an Indian child who is a member of or eligible for membership with more than one tribe is the subject of a child custody proceeding in the Omaha Tribal Court. This chapter also provides procedures and standards to secure the rights of a child who is the subject of a child custody proceeding in another forum and who is a member or eligible for membership with the Omaha Tribe.

SECTION 12-3-2. Application

The Omaha Tribal Indian Child Welfare Act applies to child custody proceedings involving Indian children whether such children are in the physical or legal custody of an Indian parent, Indian custodian, or an Indian extended family member or any other person or institution at the commencement of any such proceeding or whether such children have been residents or domiciled on or off an Indian reservation.

SECTION 12-3-3. Transfer of Jurisdiction to the Youth Court of the Omaha Tribe

Whenever a child who is a member or eligible for membership in the Tribe is the subject of a child custody proceeding in another jurisdiction, the Tribe shall take the following steps to secure the Tribe's jurisdiction over the child:

(a) In the case of a child who resides outside the exterior boundaries of the Omaha Reservation, the Tribe may file a motion to transfer jurisdiction to the Tribal Court. If the motion is denied, the case may be appealed. The guidelines for determining whether to request a transfer under this Section include:

- (1) The child's ties, if any, with the Tribe;

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- (2) Whether the child previously resided within the exterior boundaries of the Reservation;
- (3) Whether the child has been abandoned by his parents, guardian or Indian custodian;
- (4) Whether the parents have requested a transfer of jurisdiction to Tribal Court;
- (5) Whether the child is of sufficient age or maturity to express an opinion as to whether he/she desires to be returned to the jurisdiction of the Tribe;
- (6) The stability of the child's family residing within the territorial jurisdiction of the Tribe;
- (7) Whether the Tribe has expressed by resolution that it is in the best interest of the Tribe and the child to request a transfer of jurisdiction.

(b) The director of the Omaha Tribe's Indian Child Welfare Act (ICWA) Department, the Department's legal representative or other party so designated by the Omaha Tribe shall be the party or agency vested with the authority to determine, under Section (a) above, whether a Motion to Transfer Jurisdiction should be filed. This power may be vested with a Indian Child Welfare Act (ICWA) board if the Tribe sees fit to appoint one.

(c) If a child is transferred to the jurisdiction of the Tribal Court, the Court shall proceed with the case under the procedures provided in this chapter. In the absence of provision for procedures under this chapter, the Court shall proceed with the case under the procedures provided for youth in other chapters of this Title.

SECTION 12-3-4. Intervention Required; Purpose

Whenever a child who is a member or eligible for membership with the Tribe is the subject of a child custody proceeding in a state court or other forum, the Tribe shall file a motion to intervene in the case. The purpose of the Tribe's intervention include, but are not limited to, ensuring that the placement preferences of the federal Indian Child Welfare Act are followed and to ensure that any disposition of the child is culturally and socially appropriate for the child's needs and the Tribe's interests.

SECTION 12-3-5. Waiver of Transfer and Intervention Requirements; Extraordinary Circumstances

The requirements for transfer of jurisdiction and intervention may be waived by the Tribe if extraordinary circumstances exist. Extraordinary circumstances include, but are not limited to, excessive cost to the Tribe.

SECTION 12-3-6. Enforcement Responsibility

Enforcement of this chapter shall be the responsibility of the tribal prosecutor, the Indian Child Welfare Act Program, Department of Child Protection Services and the Tribe.

SECTION 12-3-7. Jurisdiction over Child Custody Proceedings Initiated in the Omaha Tribal Courts

The Omaha Tribe shall have exclusive jurisdiction over child custody proceedings initiated in the Omaha Tribal Court when the subject of those proceedings is eligible for membership in the Omaha Tribe but in no other tribe. The Omaha Tribe shall have concurrent jurisdiction over child custody proceedings initiated in the Omaha Tribal Court when the subject of those proceedings is eligible for membership in more than one tribe.

SECTION 12-3-8. Preference for Omaha Tribal Membership

In the event that a minor child becomes the subject of an action before the Omaha Tribal Court which would qualify under this Chapter as an ICWA applicable case, and the minor is not enrolled in any Federally recognized Tribe or Band, where the minor child may be eligible for membership in more than one Tribe and one of the Tribe's for which the minor may be eligible is the Omaha Tribe there shall exist a rebuttable presumption that the Omaha Tribal Court shall retain jurisdiction. This may only be rebutted by clear and convincing evidence presented by an Official of another Tribe in which the minor may claim eligibility that

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the ties which bind the minor to the other Tribe are superior to those which bind the minor to the Omaha Tribe.

SECTION 12-3-9. Transfer of Proceedings from the Omaha Tribal Court to Another Tribal Judicial System

(a) In any child custody proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Omaha Tribal Court may, at the discretion of the court, transfer such proceeding to the jurisdiction of another tribe in which the child is a member or eligible for membership upon the petition of either parent, the Indian custodian or the child's other tribe. Provided, that such transfer shall be subject to declination by the tribal court of such tribe.

A written determination by an Indian tribe that a child is a member of or eligible for membership in that tribe, or testimony attesting to such status by a person authorized by the tribe to provide such testimony, shall be conclusive. A written determination by an Indian tribe, or testimony by a person authorized by the tribe to provide such testimony, that a child is not a member of or eligible for membership in that tribe shall be conclusive as to that tribe. In the event that no tribe provides evidence on the child's status as an Indian child, the court shall determine the child's status.

SECTION 12-3-10. Intervention in an Omaha Tribal Court Proceeding by Another Party

In any child custody proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child who is the subject of the proceeding and the other tribe in which the child is a member or eligible for membership shall have a right to intervene at any point in the proceeding.

SECTION 12-3-11. Full Faith and Credit to Public Acts, Records, and Judicial Proceedings of Indian Tribes

The Omaha Tribe shall give full faith and credit to the public acts, records and judicial proceedings of any Indian tribe applicable to child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records and judicial proceedings of any other entity.

SECTION 12-3-12. Pending Court Proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation

In any involuntary proceeding, including review hearings, where the court knows or has reason to know that an Indian child who is a member or eligible for membership in any other tribe is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parents, Indian custodian and the child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the United States Secretary of the Interior in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parents, Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parents, Indian custodian and the tribe or the Secretary: Provided, that the parent, Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Representation by counsel

Parties to child custody proceedings may be represented by counsel of their own choosing at their own expense.

(c) Examination of reports or other documents

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Each party to a foster care placement or termination of parental rights proceeding shall have the right to examine all reports or other documents filed with the court.

(d) In any child custody proceeding, the court or any party shall be deemed to know or have reason to know that an Indian child who is a member of or eligible for membership with another tribe is involved whenever

(1) A party or the court has been informed by any interested party, an officer of the court, a tribe, an Indian organization, a public or private agency or a member of the child's extended family that the child is or may be a member of or eligible for membership with more than one tribe; or

(2) The child who is the subject of the proceeding gives the court reason to believe he or she is or may be a member of or eligible for membership with more than one tribe.

(3) The Court shall be deemed to have knowledge of the child's membership status if any member of the Court Staff, Legal Counsel employed at the Tribal Court or employee of the Tribe's ICWA Department or CPS Department has been so informed under the requirements of sub-Section 12-3-12 (d)(1) above.

(4) Their shall be an affirmative duty on all parties and their legal counsel or Tribal Employees detailed above to inform the Court in writing or by sworn testimony of any knowledge of a minor's potential eligibility for enrollment in another Tribe.

SECTION 12-3-13. Parental Rights; Voluntary Termination

(a) Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to a termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of an Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, and the child shall be returned to the parent.

(c) Collateral attack; vacation of decree and return of custody; limitations

After the entry of a final decree of adoption, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under Tribal Law.

SECTION 12-3-14. Petition to a Court of Competent Jurisdiction to Invalidate Action Upon Showing Certain Violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 7 through 13 of this chapter.

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SECTION 12-3-15. Return of Custody

Whenever a final decree of adoption has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing that such return of custody is not in the best interest of the child.

SECTION 12-3-16. Removal from Foster Care Home; Placement Procedure

Whenever a child is removed from a foster care home or institution for the purpose of further foster care, preadoptive or adoptive placement, such placement shall be in accordance with the provisions of this chapter and shall occur after a hearing supported by a finding that such placement is in the best interests of the child, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

SECTION 12-3-17. Tribal Affiliation Information and Other Information for Protection of Rights from Tribal Relationship; Application of Subject of Adoptive Placement; Disclosure by Court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

SECTION 12-3-18. Agreements Between the Omaha Tribe and Other Tribes or a State

(a) Subject coverage

The Omaha Tribe may enter into agreements with other tribes or a state respecting the care, custody and jurisdiction over child custody proceedings concerning a child who is a member of or eligible for membership with the Omaha Tribe, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected

Such agreements may be revoked by either party upon one hundred eighty days written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction unless the agreement provides otherwise.

SECTION 12-3-19. Improper Removal of Child from Custody; Delineation of Jurisdiction; Forthwith Return of Child; Danger Exception

Where any petitioner in an Indian child custody proceeding has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

SECTION 12-3-20. Emergency Removal or Placement of Child; Termination; Appropriate Action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child from his parent or Indian custodian or the emergency placement of such child in a foster home or institution in order to prevent imminent physical damage or harm to the child. The emergency removal or placement shall be terminated immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

SECTION 12-3-21. Information Availability to and Disclosure by Secretary

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(a) (a) Copy of final decree or order; other information; anonymity affidavit; exemption from Freedom of Information Act

A final decree or order in any Indian child adoptive placement in which an Indian child who is a member of or eligible for membership with more than one tribe is the subject of the placement shall provide the Secretary of Interior with a copy of such decree or order together with such other information as may be necessary to show

- (1) the name and tribal affiliations of the child;
- (2) the names and addresses of the biological parents;
- (3) the names and addresses of the adoptive parents; and
- (4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552, as amended).

(b) (b) Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment

Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Omaha Tribe and the Secretary shall disclose such information as may be necessary for the enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

CHAPTER 4. YOUTH COURT

SECTION 12-4-1. Proceedings in the Best Interest of the Child

Proceedings under this Title shall be in the best interests of the child.

SECTION 12-4-2. Telephone/Facsimile Orders

The Court may issue orders by telephone and/or facsimile machine and such orders shall have the same force and effect as original written orders. Telephone orders shall be followed by a written order as soon thereafter as possible.

SECTION 12-4-3. Tribal Prosecutor to Represent the Tribe

The Tribal Prosecutor or his designated representative shall represent the Tribe in all proceedings brought under this Title, except where other legal representation has been provided, i.e. separate counsel for CPS and/or ICWA departments or a juvenile presenting officer. It is the responsibility of the Omaha Tribal Counsel to provide a Tribal Prosecutor or other legal representation for the Department of Health and Human Services (CPS).

SECTION 12-4-4. Preliminary Investigation

A preliminary investigation shall be conducted by the Tribal Prosecutor, or other appropriate legal counsel, upon receipt of a written report from the Department of Child Protection Services, law enforcement or another individual or entity, that a child is, or appears to be, within the purview of this Title. The Tribal Prosecutor, or other appropriate legal counsel, shall make a determination based on the reports and investigations of law enforcement and the Department of Child Protection Services of whether further action is warranted. On the basis of the investigation, the tribal prosecutor, or other appropriate legal counsel, shall decide whether to pursue an action under this Title.

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CHAPTER 5. PROCEDURES AND PROCESS GOVERNING THIS TITLE

SECTION 12-5-1. Paternity

The Tribal Court shall have the authority to order, at the cost of the biological father if he is determined to be the father or at the mother's cost, or other identifying party, in the event of an incorrect identification, genetic testing in order to establish paternity so that a determination of eligibility for enrollment may be made with regards to a minor child.

SECTION 12-5-2. Temporary Custody Order

The court may order temporary custody of any child during any scheduled hearing.

SECTION 12-5-3. Ex-parte Temporary Custody Order

Without a scheduled hearing, the court may immediately issue an ex parte temporary custody order in the following instances on the receipt of an affidavit or, on receipt of sworn oral testimony communicated by telephone or other appropriate means:

(a) On application by the Tribal Prosecutor, or other appropriate legal counsel, regarding an apparent, alleged, or adjudicated abused or neglected child stating reasonable grounds to believe as follows:

- (1) The child is abandoned or is seriously endangered by his environment; or
- (2) There exists an imminent danger to the child's life or safety and immediate removal of the child from his parents, guardian or custodian appears to be necessary for the protection of the child;

(b) On application by the Tribal Prosecutor, or other appropriate legal counsel, respecting an alleged or adjudicated child in need of supervision stating reasonable cause, pursuant to Chapter 7 or a youthful offender, pursuant to Chapter 8, to believe as follows:

- (1) The child presents a serious danger to himself or there is need for protection of others from the child; or
- (2) The child has run away or escaped from the child's parents, guardian or custodian.

SECTION 12-5-4. Temporary Custody Placement

(a) An alleged abused or neglected child placed in custody by the court under Section 12-5-2 or Section 12-5-3 shall be placed in the temporary custody of the Department of Child Protection Services for foster care placement in accordance with the placement preferences set out in Section 12-5-5. The Department of Child Protection Services shall promptly notify the Tribal Prosecutor, or other appropriate legal counsel, of the child's placement.

(b) An alleged child in need of supervision or juvenile offender taken into temporary custody under Section 12-5-5 and not released to the child's parents, guardian or custodian may be placed in foster care, shelter or detention as designated by the court to be the least restrictive alternative for the child.

(c) No child may be held in temporary custody longer than forty-eight (48) hours, excluding Saturdays, Sundays, and holidays, unless a petition has been filed and the court orders longer custody during a scheduled hearing or a telephonic hearing.

(d) The court may at any time order the release of a child from temporary custody with or without restriction regarding the care and protection of an alleged child in need for supervision at a time, date and place to be determined by the court.

(e) The Youth Court may make the child a Tribal Ward, or on application from CPS a State Ward, as part of an ex-parte or other Temporary Custody Order.

SECTION 12-5-5. Foster Care Placement Preferences

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When any child is placed in foster care, the child shall be placed in the least restrictive setting which most approximates a family and in which the child's needs may be met. In any foster care or pre-adoptive placement, a preference shall be given in the absence of good cause to the contrary, to placement in the following order:

- (a) A member of the child's extended family;
- (b) An Indian foster home licensed by either the Tribe or the State of Nebraska;
- (c) Any foster home licensed by the State of Nebraska; or
- (d) An institution for children approved by the Tribe and the court.

SECTION 12-5-6. Service of Summons

Upon the filing of a Petition filed under this Title the Clerk of the Tribal Court shall issue summons as delineated in Chapters 6, 7 or 8 and service shall be made personally by either a Clerk of Court, sworn law enforcement officers or designated Process Server.

SECTION 12-5-7. Publication of Summons

(a) When a petition or an affidavit of the tribal prosecutor, or other designated legal representative, discloses that any person or party to be served with the summons is outside the jurisdiction of the Tribal Court, or upon due diligence cannot be found, or is concealed, or whose mail at the last known address has been returned, or whose location is unknown, or is affected by the designation "All Whom It May Concern" the summons, modified to declare the initials of the child in lieu of the name of the child, shall be published by one of the following methods, the method to be used shall be designated on a case by case basis by the judge as the most likely to accomplish actual notice:

- (1) Shall be posted in at least 4 conspicuous public locations within the boundaries of the Reservation. A list of such conspicuous locations or designated public places shall be established and maintained by the Court.
 - (2) Once in a newspaper, newsletter or other official publication of the Omaha Tribe.
 - (3) Once in a Native American newspaper generally available on the reservation.
 - (4) Once in a newspaper of general circulation published in the county in which the child or the parents reside or in another newspaper designed by the court as most likely to give notice to the party to be served.
- (b) Publication of the summons shall be made not less than thirty (30) days before the date of the hearing on the petition. Notice given by the publication is the only required notice to the concerned parties to be served who are described in this Section.

SECTION 12-5-8. Service of Process to CPS

Service of process on or notice to the Omaha Child and Family Services Program under this Title shall be made on the Director of said Program or upon the attorney for the Department.

SECTION 12-5-9. Warrants Issued against Parents, Guardian or Custodian

If the summons has been attempted but not successful on the child's parents, guardian or custodian, or if any party fails to obey the summons, or if it is made apparent to the court by affidavit of the tribal prosecutor, or other appropriate legal counsel, which may be on information and belief, that a summons will be ineffective to secure the required presence of the child, parent, guardian or custodian, a warrant may be issued by the court against the parents, guardian or custodian of the child requiring that the party or the party and the child be brought before the court. If the court requires the presence of any child, a warrant may be

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issued by the court against the child directing the child to appear before a court. When a warrant is issued, a Tribal law enforcement officer shall take the named party into custody and bring the party before the court.

SECTION 12-5-10. Appearance and Answer/Failure as Default

Every person or party to whom notice is given by summons and all other interested parties affected by the designation "All Whom It May Concern" may appear, either in person or by attorney, pursuant to summons, and answer, either in writing or orally in open court, in response to the petition. If any party fails to appear pursuant to summons or fails to answer or otherwise respond to the petition, the petition shall be taken as admitted to by the party.

SECTION 12-5-11. Conduct of Hearings

Hearings under this Title shall be conducted as follows:

(a) Adjudicatory hearings shall be conducted in accordance with the Rules of Civil Procedure under Title 2 of this Code, except as otherwise provided in this Chapter;

(b) Dispositional hearings and all other hearings shall be tried to the court and conducted and designed to inform the court fully of the exact status of the child and to ascertain history, environment and the past and present physical, mental and moral condition of the child and of the child's parents, guardian or custodian;

(c) A verbatim record shall be taken of all hearings, except telephonic hearings; and

(d) All hearings and actions under this Title are closed. The court may, in its discretion, allow extended family members or other interested parties to be present during hearings.

SECTION 12-5-12. Rights of Parents, Guardian or Custodian

The court shall advise the child's parents, guardian or custodian involved in any proceeding under this Title of their constitutional and statutory rights, including their right to be represented by an attorney, at their own cost, pursuant to the Omaha Constitution, Article XI, Bill of Rights, at the first appearance of the parties before the court.

SECTION 12-5-13. Other Sources of Law

(a) In exercising its powers under this Title, the Omaha Youth Court shall follow the traditional Omaha ways respecting child care and family relations, except to the extent that such traditional ways may be inconsistent with the express provisions of this Title.

(b) The provisions of this Title shall stand as self contained. No gap filler or borrowing provisions shall function to import binding law or precedent from another State or jurisdiction and only Federal law and precedent shall impact this Title as binding. This in no way effects the persuasive weight of any of these outside laws.

(c) Should there be a gap in this Title or a specific issue which this Title does not address the Court shall apply the principals of equity, comity and traditional notions of justice and fairplay while complying with subsection (a) above.

SECTION 12-5-14. Confidentiality

(a) The records of law enforcement officers and tribal agencies concerning all children taken into temporary custody or issued a summons under this Chapter shall be maintained separately from the records regarding detention of adult persons. The records of children, including fingerprints, photograph, name, address or other information concerning the identity of a child taken into temporary custody may not be inspected by or disclosed to the public except:

(1) To the person or party specifically authorized by order of court;

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(2) Information concerning a child may be released, pursuant to an order of the court, to persons or agencies who have a legitimate interest in the child, including but not limited to Child Protective Services or its legal representative, Guardian ad litem or appointed CASA worker, to the child's parents, guardian or custodian, or to the child's attorney.

(b) The name, picture, place of residence or identify of any person appearing as a witness in proceedings under this Title may not be published or broadcast in any news media or given any other publicity.

SECTION 12-5-15. Confidentiality of Department of Health and Human Services Investigative Materials.

All CPS investigative materials, including interview notes, internal reports and identity of reporting persons not made part of the Court record as admitted or offered evidence shall be confidential and shall not be available to any persons, except that CPS at its discretion may release information necessary to protect the safety and well being of the minor child.

SECTION 12-5-16. Initial Appearance/Advisory Hearing

Upon the initial appearance of the parties, which shall be deemed the first phase of the adjudicatory hearing, pursuant to summons or at any adjournment or continuance on an initial appearance, the court shall conduct an advisory hearing as follows:

(a) The court shall first:

(1) Ascertain the need for any joinder or deletion of parties, determine legal names and all aliases of all parties, addresses and telephone number of the parties and their relationship to the child, and determine the legal name, date and place of birth, address and custodial status of the child;

(2) Advise the parties of the nature of the proceedings, the allegations contained in the petition, the burden of proof of the Tribe, and constitutional and statutory rights of the parties; and

(3) Advise the parties of their right to be represented by an attorney at their own cost; and

(b) The court shall then receive the answer, response, denial or admission of the parties as follows:

(1) The parents, guardian or custodian of the child may admit the allegations contained in the petition and the court may accept the admissions if the court is satisfied there is a factual basis for them.

SECTION 12-5-17. Continuance

At any time after filing of the petition and before final disposition of the case, the court may continue the case where the circumstances of the case require the need for continuance. The court shall issue an order to continue custody of any child for up to but no longer than three (3) months, except where a demonstration of an extreme circumstance which would require a longer period of continuance in order to conform to the requirements of due process, the attendance of an indispensable party or the necessity of continuing the matter in order that an examination or other report from a source outside the direct authority of the parties.

SECTION 12-5-18. Appointment of a Guardian Ad Litem

(a) A guardian ad litem is an individual appointed for the purpose of representing the child's best interests in a given action, and as such the guardian ad litem is considered an officer of the Court.

(b) The court may appoint a guardian ad litem for an alleged or adjudicated abused or neglected child upon its own motion, or upon the motion of any party or for an alleged or adjudicated child in need of supervision.

(c) The guardian ad litem shall be a disinterested person with a working knowledge of the Omaha Tribe and this Title. The guardian ad litem need not be an attorney and shall not be considered an attorney for the purposes of any proceeding under this Title.

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(d) The guardian ad litem shall receive all reports concerning the child and shall investigate the circumstances of each case for the child or children the guardian is appointed to represent. The investigation shall include contacts with family members, school officials, and other individuals having pertinent information regarding the child.

(e) The Court may upon its discretion and upon a finding of fault direct that a party at fault bear a portion or all of the costs of the Guardian ad-Litem.

SECTION 12-5-19. Examinations for the Purpose of Evaluating the Child

The court may require any child under this Title to be examined by a physician or qualified mental health professional. Referrals for such examinations will be to the Tribal Health Department, or other ordered medical professional or institution.

The court may direct that an examination or evaluation report be submitted to the court and such report may be considered by the court at any phase of the proceedings. Such order shall supercede any requirement of a release of medical information otherwise required to be executed by the parent or guardian.

Unless otherwise ordered by the Court, the Tribal Health Department shall bear the costs of the examination(s).

SECTION 12-5-20. Medical or Mental Health Care for the Child

The court may order the child to be examined or treated by a physician or qualified mental health professional or to receive other special care may place the child in a hospital or other suitable facility for such purposes.

SECTION 12-5-21. Witnesses

A parent, guardian, custodian and/or child shall be entitled to the issuance of compulsory process for the attendance of witnesses on his own behalf or on behalf of the child. Upon application to the court, compulsory process shall be issued for the attendance of witnesses on the behalf of the child.

SECTION 12-5-22. Petitions Admitted to By All Parties

(a) When all parties admit the allegations contained in the petition and the court accepts the admission, the court shall find, conclude and make a decision as to adjudication of the child under the applicable provisions of this Title. The court shall then proceed with the dispositional phase of the proceedings without conducting a formal adjudicatory hearing on the petition. The court may set a later time and date for the dispositional hearing, or with the agreement of all parties upon its own motion or a motion of one of the parties may proceed immediately to disposition if circumstances warrant it. If the disposition is to be set for a later date the court shall then determine interim arrangements concerning the child and the parties.

(b) If the petition is not admitted by all parties, or if the petition is denied by any necessary party the court shall proceed with the adjudicatory hearing on the petition or schedule the adjudicatory hearing for a later time and date.

(c) If the advisory hearing is adjourned and continued to a later date or if the advisory hearing is completed and the adjudicatory hearing on the petition is scheduled for a later time and date, the court shall make an interim order regarding temporary custody of the child.

SECTION 12-5-23. Adjudicatory Hearing

(a) Following an advisory hearing on a petition, the court shall conduct an adjudicatory hearing. The court shall consider whether the allegations of the petition concerning an alleged abused or neglected child or whether the allegations of the petition concerning an alleged child in need of supervision are proven by a preponderance of the evidence or whether the allegations contained in a delinquency petition are supported by evidence beyond a reasonable doubt. In cases concerning abused or neglected children, evidence that

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child abuse has occurred is prima facie evidence that the child is an abused or neglected child regardless of allegations contained in the petition, and such evidence is sufficient to support and adjudication of the child as an abused or neglected child.

(b) Written reports and other material and information relating to the child's mental, physical and social history may be received and considered by the court at the hearing together with other evidence relating to allegations of the petition or circumstances then affecting the child. If requested by the child or the child's parents, guardian or custodian or other interested party appearing as a respondent in the action, the court shall require the party who prepared the reports or material to appear as a witness and be subject to both direct and cross-examination. In the absence of a request regarding the appearance of the party, the court shall require the party preparing reports or material to appear and testify if the court finds that interests of the child or the child's parents, guardian or custodian or any other respondent to the proceedings so require. The child's parents, guardian or custodian may prepare a report in response to any report concerning the child filed with the Court.

SECTION 12-5-24. Final Order Where All Allegations not supported by Evidence

If the court finds that the allegations of a petition are not proven to the applicable standard of proof, the court shall enter a final order accordingly and the action shall be terminated. In the case of an alleged abused or neglected child, the court shall enter findings and conclusions in addition to the final order. On termination of the action, the child, the child's parents, guardian or custodian and other respondent parties shall be released from any restriction or temporary order previously issued by the Court and from the jurisdiction of the court. The final order terminating the action is a final order for purposes of appeal by the Tribe or by an alleged abused or neglected child or any party respondent not in agreement with the non-adjudication of the alleged abused or neglected child and resulting termination of the action. Additionally, the Court shall make a specific finding and order in child abuse or neglect cases that the parties against who the petition was filed shall be granted approval by the Court for any action to remove a name from the Central Registry if such listing had been made as a result of the filing of the petition.

SECTION 12-5-25. Order of Adjudication Where Allegations supported by the Evidence

(a) If the court finds the allegations of the petition are supported by evidence that meets the applicable standard of proof the court shall adjudicate the child accordingly and shall issue findings of fact, conclusions of law and an order of adjudication stating the child to be an abused or neglected child, a youthful offender or a child in need of supervision. The order of adjudication is a final order and is subject to appeal according to the Tribal rules governing appeals. For the purposes of appeal neglect and abuse petitions and those alleging child in need of supervision shall be governed by civil appeals process while appeals from an adjudication shall be considered criminal matters for the purposes of appeal.

(b) The court shall proceed with the dispositional phase of the proceedings and shall issue an order setting the time, date and place of the dispositional hearing and prescribing notice of the hearing.

(c) The court shall issue an interim dispositional decree governing custody, placement, care, shelter or detention of the child pending the dispositional hearing.

SECTION 12-5-26. Exams, Reports, and Investigations of Adjudicated Child before Final Disposition

After adjudication of a child as an abused or neglected child, a youthful offender or a child in need of supervision and before the final disposition of the case, the court may require the following examinations and investigations and reports of them:

(a) The court may order the child's parents, guardian, custodian or relative of the child who might be considered as a potential caretaker of the child on disposition to submit to psychological, psychiatric or mental examination and evaluation by a qualified mental health professional or physicians and submit the report to the court. The order may be issued by the court on motion of the Tribe, the child, any interested party, or on the court's own motion. The order directing the examination and evaluation shall state the time,

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place, manner, conditions and scope of the examination and evaluation to be made and the person or persons by whom it is to be made.

(b) The court may order home study investigations and reports of the investigations concerning the child's parents, guardian, custodian, any other party respondent or a relative of the child who may be a potential caretaker of the child on disposition. The order for a home study investigation and a report of the investigation shall state the conditions and scope of the investigation. Reports received by the court pursuant to this Section may be released by the court to attorneys of record for the parties and may be received by the court as evidence in the dispositional phase of the proceedings.

(c) The Court shall utilize any existing multidisciplinary or systemic program approved by the Omaha Tribal Counsel and shall make appropriate orders to refer any or all applicable parties to the evaluation process for such program and shall enforce this referral through the contempt power of the Court. At the time of this Title being enacted, the Community Intervention Team and the Red Flag program are so designated and this Section shall specifically apply to those programs or any complementary or successor organizations or groups.

(d) In cases of youthful offenders the Court may order investigations or evaluations of the nature of the delinquency, risk of recidivism, potential danger the youthful offender may represent to the community or himself/herself, and least restrictive yet likely effective measures to rehabilitate the youthful offender.

(1) This may include Office of Juvenile Services (OJS) evaluations for the purpose of evaluating the youthful offender for candidacy for the OJS system. This may be on the motion of any party or on the Court's own motion; however, if the Court has access to the OJS system such evaluations shall be conducted when the youthful offender has been adjudicated to have committed acts that constitute a class A offense under Title 5 of this Code and may be ordered for other youthful offenders on the Courts own motion or upon motion of the Tribe or a parent, guardian or custodian.

SECTION 12-5-27. Dispositional Hearing/Final Decree

(a) After adjudication, the court shall conduct dispositional hearings in accordance with this Title, and consider evidence regarding proper disposition of the child according to the least restrictive alternative and commensurate with the best interests of the child with due regard to the rights and interests of the child's parents, guardians, custodians, other party respondents, and the Tribe. Dispositional evidence may include social study reports, mental and medical examinations and evaluation reports, home study investigation report, OJS evaluations and any other evidence related to appropriate disposition of the child.

(b) The court shall issue findings of fact, conclusion of law and a final decree of disposition. The decree shall be the final order of the court for the purpose of an appeal by any party according to the rules governing appeals.

(c) Notice of entry of an order of adjudication or final decree of disposition in any case shall be served on the parties to the action.

SECTION 12-5-28. Orders for Support

Upon adjudication and removal the child from the custody of the child's parents, guardian or custodian, the court shall order each of the child's parents, guardians or custodians to contribute to the financial support of the child.

(a) Each parent guardian or custodian shall upon order of the Court submit proof of income to the Tribal Prosecutor or other designated legal representative of the Omaha Tribe. This shall include all sources of income including State, Federal or Tribal assistance, social security benefits, other orders of support on behalf of any child and any benefit or income which the parent, guardian or custodian receives on behalf of the child and any wage or remuneration from employment.

(b) The Court shall order that any benefit or income which is on behalf of the child be transferred or designated to the Clerk of the Omaha Tribal Court until further order of the Court.

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(c) The Court shall further order that an amount of support equal to 10% of net income per child to a maximum of 25% of net income for multiple children shall be paid monthly to the Clerk of the Omaha Tribal Court by the 10th day of each month, or other such day that the Court may order, and that such shall be enforceable by the contempt power of the Court or by criminal charges should the parent or guardian be more than 90 days in arrears.

(d) The parent, guardian or custodian shall be considered delinquent on the first day after the payment is due.

(e) Interest shall accrue at 5% simple interest per month beginning thirty days after the party ordered to pay support becomes delinquent.

(f) Any party working for the Omaha Tribe or other employer within the boundaries of the Omaha Tribal Reservation shall execute a voluntary withholding or similar document and the employer shall submit such monies to the Court on at least a monthly basis. Any differential between the ordered payment date and the parties pay or employer remittance schedule shall not constitute delinquent support if made as part of an ongoing series of payment.

In no case shall a parent, guardian or custodian be ordered to pay less than \$50 per month without a specific finding of exigent circumstances by the Court.

SECTION 12-5-29. Orders for Protection

The court may enter an order of protection in addition to, or as condition of, any decree of disposition authorized by this Chapter. The order of protection shall set forth reasonable conditions of behavior to be observed for a specified period by any person who is a party to such proceedings.

The order of protection may require any person or party:

- (a) To stay away from the child or the child's home;
- (b) To permit a parent or other person to visit a child at stated periods and places, with or without supervision;
- (c) To abstain from offensive conduct against a child or the child's parents, guardian, custodian or other person having custody or temporary care of the child;
- (d) To give proper care and maintenance of the child's home;
- (e) To refrain from any acts that tend to make a home an improper place for a child;
- (f) To cooperate with and participate in any physical or mental examination and evaluation, counseling, treatment, therapy or childcare or parenting classes considered necessary by the court for the benefit of the child.

After notice and a hearing is given to any person or party subject to an order for protection, the order may be terminated, modified or extended for a specified period of time if the court finds it in the best interests of the child. Such notice and hearing may be joined to a petition alleging neglect or abuse or minor in need of supervision under this Title.

SECTION 12-5-30. Final Decree of Disposition

The court shall enter a final decree of disposition which shall include one or more of the following provisions appropriate as the least restrictive alternative available;

- (a) Place the child in the custody of one or both parents or in the custody of another individual under the preferences set out in Section 12-5-13, without a court approved plan for long term foster care, subject to the conditions that the court deems necessary and appropriate;

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(b) Place the child in the custody of the Department of Child Protection Services, or if need be to the Nebraska Department of Health and Human Services pursuant to court approved plan for placement under Section 12-5-13.

(c) Order that the child be examined by a physician or qualified mental health professional or that the child receive other special care or be placed in a suitable facility for such purposes as the court deems necessary or appropriate. Further hearings shall be held as necessary following any examination.

(d) The Court may order, under the provisions under Chapter 9 of this Title, that the minor child be emancipated.

If disposition of the child under this Section involves the removal from, or the non-return of the child to, the home of the child's parents, guardian or custodian and placement of the child in the custody of the Department of Child Protection Services of the Nebraska Department of Health and Human Services for placement in foster care, the court shall include in the decree a written judicial determination, supported by a preponderance of the evidence, that the continued custody of the child by the child's parents, guardian or custodian is likely to result in serious emotional or physical harm to the child and that remedial and rehabilitative measures have been attempted and proven unsuccessful.

SECTION 12-5-31. Notice of Final Decree

Notice of entry of order of adjudication or final decree of disposition issued by the court shall be served on the child's attorney or guardian ad litem, and other respondent parties. Notice by publication shall be published in a newspaper most likely to provide notice to the parties for at least thirty (30) days and shall be completed five (5) days after the date of publication. Appeal from a final decree begins on the day following the date of completed service of the notice of entry regardless of the manner in which the notice of entry is served. An appeal of a final order must be entered within thirty (30) days of the final date of order.

SECTION 12-5-32. Requirement for Review Hearing

In every case where there has been an adjudication and the child remains either in an out of home placement or in the home, but under the wardship of the Omaha Tribal Court, Omaha Tribal CPS or the Nebraska Department of Health and Human Services there will be a hearing no less than every six months to review progress in the case and placement.

SECTION 12-5-33. Criteria for Determining Continued Placement

In conducting the review hearing required by 5-5-32, the court may continue placement of the child separate from the home of the child's parents, guardian or custodian upon a written judicial determination that return of the child to the home would likely result in serious emotional or physical harm to the child and that remedial and rehabilitative measures which would make it possible for the child to return to the home have been attempted and proven unsuccessful. In making this determination, the court may consider the following criteria:

- (a) The goals of the foster care placement and the appropriateness of the foster care;
- (b) The assistance and services which have been offered to reunite the child with the child's parents guardian or custodian and the good faith efforts, or their lack, and ability of the child's parents, guardian or custodian to cooperate with the department and to effectively utilize the assistance and services for the benefit and welfare of the child; and
- (c) If the return of the child to the home of the child's parents, guardian or custodian is not likely, the reasonable efforts of the department that have been made or should be made to provide for other methods of care in keeping with the best interests of the child.

SECTION 12-5-34. Order of Decree of Guardianship of Child

Any child adjudicated to be an abused or neglected child, youthful offender or child in need of supervision, and awarded by the court to a guardian or institution or governmental entity with placement at

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the entities discretion, shall be held by the guardian or institution or governmental entity by virtue of the order or decree entered of record in the case. The court shall order a decree as proof of the authority of the guardian or institution over the child.

SECTION 12-5-35. Guardianship of the Estate of the Child

(a) Unless otherwise specifically ordered by the court in its order or decree, nothing in this Chapter or any other Chapter of this Title gives the guardianship of the estate of the child to any guardian appointed, or changes the age of minority of a child for any purpose unless the child is a person under age twenty-one (21) years who is under the continuing jurisdiction of the court.

(b) Subsection (1) above specifically does apply to per capita payments. Acceptance of guardianship of a child does not without specific order of the court grant the guardian the ability to access the per capita account in any fashion. However, such an award of guardianship shall serve to terminate the access of non-custodial parents to the child's per capita account. The parents shall be advised of this and any such attempt to access the child's per capita account shall be prima facie evidence of theft by deception under Title 5 of this Code.

(c) The court may appoint a guardian of the estate of the child who is under the age of eighteen (18) years if the child is within the jurisdiction of the court and the court specifically finds that appointment of a guardian of the estate is necessary and appropriate under the circumstances and is in the best interests of the child.

SECTION 12-5-36. Period of Continuation of Guardianship/Application for New Guardian, Restoration to Parents or Discharge of Guardianship

Guardianship of the person or of the estate of the child shall continue until the court orders otherwise, but not after the child has attained the age of majority. The child or representative of the child, or any interested party may from time to time, upon a proper showing, apply to the court for the appointment of a new guardian, for restoration of the child to the custody of the child's parents, if parental rights have not been terminated, or for the discharge of the guardian appointed by the court at the final disposition of the child.

SECTION 12-5-37. Modification or Setting Aside Order or Decree

The court may modify or set aside any order or decree. Modification of a prior order or decree shall not be made without a hearing under either of the following circumstances:

(a) Upon violation of the terms of probation governing a child in need of supervision or youthful offender; or

(b) The effect of modifying or setting aside the order or decree would be to deprive a parent of custody of the child or make a change in custody.

SECTION 12-5-38. Petition for Modification or Termination of Custody Decree

After placement of custody of a child by the court with an individual, institution or agency, a parent whose parental rights have not been terminated, or a former guardian or custodian of the child may petition the court for restoration of custody or other modification or termination of the prior custodial order or decree on the grounds that a material change of circumstance has occurred which requires the modification or termination in the best interests of the child and the Tribe.

SECTION 12-5-39. Petition for New Hearing on Grounds of New Evidence

A child and/or a representative of the child or a child's parents, guardian or custodian may petition the court for a new hearing, related to adjudication or disposition, on the ground of newly discovered evidence which was not known and could not, with due diligence, have been available at the original adjudicatory or dispositional hearing. A hearing on the petition shall be conducted and, upon a finding by the court that new

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evidence exists which might affect the original order or decree, the court shall order a new hearing, limited to consideration of newly discovered evidence, and shall proceed with a revised determination of the case as warranted by the evidence. In all cases, the decision to hold a new hearing shall be discretionary with the court.

CHAPTER 6. PROTECTION OF CHILDREN FROM ABUSE AND NEGLECT

SECTION 12-6-1. Purpose

The purpose of this Chapter is to protect children from abuse and neglect. Adjudication of a child as an abused or neglected child is an adjudication of the status or condition of the child.

SECTION 12-6-2. Abused or Neglected Child Defined

The definition of an abused or neglected child shall be a child:

- (a) Whose parent, guardian or custodian has abandoned the child or has subjected the child to mistreatment or physical battering or substantial threat of serious physical harm;
- (b) Who lacks proper parental care through the actions or omissions of the child's parent, guardian or custodian;
 - (1) A finding that there is no competent person supervising the welfare of a child under the age of fourteen who is not under the influence of alcohol or other chemical or natural substances not prescribed by a doctor or physician is a defacto lack of proper parental care;
 - (c) Whose home environment is physically injurious to the child's welfare to include the minor being in a home environment with exposure to domestic violence or abuse;
 - (d) Whose parent, guardian or custodian fails or refuses to provide prior or necessary subsistence, supervision, education, medical care or any other care necessary for the child's health, guidance or well-being including the failure to protect the minor from exposure to domestic violence or abuse;
 - (1) The failure of a parent, guardian or custodian to participate in remedial activities delineated under Chapter 7 of this Title is defacto failure to supervise.
 - (2) The refusal of a parent, guardian or custodian to accept the custody of a child under their care from an Order of the Omaha Tribal Court, CPS or a member of the Omaha Tribal Law Enforcement or Detention Departments is defacto failure to provide care necessary for the guidance and well-being of the child.
 - (e) Who has sustained demonstrably substantial emotional harm or mental injury, from the child's parent, guardian or custodian or in the child's home, that impairs the child's ability to function, with due regard to the child's culture;
 - (f) Who is subject to sexual abuse, sexual molestation or sexual exploitation by the child's parent, guardian, custodian or any other person; or;
 - (g) Who is left unattended or unsupervised for extended periods of time, if under fourteen years of age, in circumstances that pose a risk of substantial harm to the child.
 - (h) Who is homeless, without proper care or not domiciled with the child's parent, guardian or custodian through no fault of the child's parent, guardian or custodian.
 - (i) Who has deserted a child or children as defined in Chapter 1 of this Title.

SECTION 12-6-3. Standard of Proof

Any allegation made under this Chapter shall be required to be proven by the Tribal Prosecutor or other designated representative by presentation of evidence that proves the allegation by a preponderance of the

OMAHA TRIBE OF NEBRASKA

P. O. Box 368
Macy, Nebraska 68039

EXECUTIVE OFFICERS

Clifford Wolfe, Jr., Chairman
Doran Morris, Jr., Vice-Chairman
Tillie Aldrich, Treasurer
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MEMBERS
Adriana Saunsoci
Vernon Miller
Jeffrey Miller

RESOLUTION

OMAHA TRIBAL COUNCIL

No. 14-110

Amending Title 12, [Omaha Youth] Chapter 6 [Protection of Children from Abuse and Neglect] Section 12-6-2 [Abused or Neglected Child Defined] of the Omaha Tribal Code [2013]

- WHEREAS, the Omaha Tribe of Nebraska is a federally recognized Indian tribe organized under a constitution and bylaws approved by the Secretary of Interior on April 30, 1936, pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934; and,
- WHEREAS, pursuant to Article III, Section 1 of the Constitution of the Omaha Tribe of Nebraska, the governing body of the Omaha Tribe shall be known as the Tribal Council; and,
- WHEREAS, pursuant to Article IV, Section 1(j) of the Constitution of the Omaha Tribe of Nebraska, the Tribal Council has the authority to safeguard, promote, and enforce the peace, economy, safety, law and order, and general welfare of the Tribe and the Omaha Indian Reservation; to regulate all manner of trade and commerce; to regulate all manner of criminal and non-criminal conduct, subject to any limitations of Federal law; and,
- WHEREAS, the Tribal Council finds that the Tribal Council enacted Title 12 of the Omaha Tribal Code, "Omaha Youth" via Tribal Council Resolution No. 02-116 on August 27th, 2002; and,
- WHEREAS, the Tribal Council finds that the primary purpose of code is to provide for the protection of children under jurisdiction of the Tribe; and,

WHEREAS, the Tribal Council has determined that it is in the best interest of the Omaha Tribe of Nebraska to amend Chapter 6 [Protection of Children from Abuse and Neglect], Section 12-6-2 [Abused or Neglected Child Defined] of Title 12 in order to enhance the protection of Children subject to the jurisdiction of the Tribe to add to the definitions that of a child who has attempted suicide or is experiencing suicidal ideations; and

NOW THEREFORE BE IT RESOLVED:

That Section 12-6-2 of Title 12 is hereby amended to add section (j) as follows: "(j) Who is a minor child who has attempted suicide or evidence exists that the minor child is experiencing suicidal ideations. This is *defacto* evidence that the minor child that requires extraordinary medical care beyond the parents/guardian/custodian resources through no fault of the parent/guardian/custodian".

BE IT FINALLY RESOLVED:

That said amendment to Section 12-6-2 of Title 12 is hereby amended effective with the date of this Resolution and shall be added to the Omaha Tribal Code.

CERTIFICATION

This will certify that the foregoing resolution was considered at a meeting of the Tribal Council of the Omaha Tribe of Nebraska, duly called and held on **August 14, 2014**, and was adopted by a vote of 5 FOR, 0 AGAINST and 2 NOT VOTING OR ABSENT with the Chairperson not voting. A quorum of 6 was present.

INTRODUCED BY: Maurice Johnson / Thayne Glenn
MOTION: Adriana Saunsoi
SECOND: Doran Morris Jr

Dated: August 14, 2014

Signed:

Clifford Walpe Jr
Chairperson, Omaha Tribal Council

Green Poets
Secretary, Omaha Tribal Council

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evidence, except in Termination of Parental Rights (TPR) action where the standard of proof shall be clear and convincing evidence.

SECTION 12-6-4. Investigation

Upon receipt of a report pursuant to Section 12-6-6 or any other report of child abuse or neglect, the Department of Child Protection Services and law enforcement officers shall investigate the report. Investigating personnel have the authority to interview a child out of the presence of the child's parents, guardian or custodian without advanced notice or consent. Investigations may include the taking of photographs of the areas of trauma visible on the child and medical examinations or testing of the child without the consent of the parent, guardian or custodian. Investigations by the Department of Child Protection Services shall be made and completed within thirty (30) days of receiving notice of the alleged abuse or neglect.

SECTION 12-6-5. Substantiated/Unsubstantiated Reports

Upon completion of an investigation of alleged abuse or neglect, the Department of Child Protection shall make a determination as to whether evidence exists to substantiate the allegation of abuse or neglect. If the report is substantiated, the information shall be added to the central registry for child abuse and neglect and then forwarded to the tribal prosecutor, or other appropriate legal counsel for appropriate action. If the allegations are not substantiated by the evidence, the Department of Child Protection Services shall close the case. The case will not be recorded into the central registry.

SECTION 12-6-6. Person Mandated to Report Child Abuse or Neglect

(a) Any person who is a health care provider, mental health professional or counselor, social worker, law enforcement officer, teacher, school counselor or licensed or registered child care provider who has reasonable cause to believe that a child has been abused or neglected is required to report such information. The report shall be made to the tribal prosecutor, the tribal Department of Child Protection Services or to law enforcement officials. Reports shall include the name, address, and age of the child, the name and address of the child's parents, guardian or custodian, if known, and details of suspected or known instances of child abuse or neglect. The Department of Child Protection Services shall be the central registry for such information.

(b) Any person identified in Section (a) above who fails to report information in their possession that would reasonably indicate abuse or neglect shall be subjected to a civil penalty of a minimum of \$250 fine and a maximum fine of \$1,000.

(c) If such failure to report results in subsequent harm to the child of the nature indicated by the information that was not reported such person shall be additionally criminally liable as an accomplice with no requirement that the abusive or neglecting party knew of the reporters knowledge of the information or failure to report. Should such a person not be within the criminal jurisdiction of this Court then the Court shall direct that the person failing to report be reported to the appropriate licensing authority if any and enjoined from practicing in any field or profession that would qualify the person as a mandatory reporter under Section (a) above for a period of three years for a first offense and a permanent injunction shall be issued for a subsequent offense.

SECTION 12-6-7. Immunity from Liability

Any person or party acting in good faith in the making of a report or the submission of copies of medical examination, treatment or hospitalization records pursuant to this Chapter, is immune from liability, civil or criminal, that might otherwise be incurred or imposed and has the same immunity for participation in any judicial proceeding resulting from the report. Immunity also extends to persons involved in the investigation and treatment of child abuse or neglect or making a temporary placement of the child pursuant to this Chapter or to any person who in good faith cooperates with the Department of Child Protection Services in investigation, placement or treatment plan. The provisions of this Section allowing the granting of immunity do not extend to any person alleged to have committed an act or acts of child abuse or neglect.

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SECTION 12-6-8. Petitions Alleging Abused or Neglected Child

The tribal prosecutor or other designated legal representative, or in the absence of the tribal prosecutor, the Department of Child Protective Services, may file with the clerk of courts a written petition alleging a child to be an abused or neglected child, as defined by Section 12-6-2 (a)-(h).

The petition shall include the following information if known by the party filing after due diligence has been employed to discover the information. Any deficiency in the initial information shall not invalidate the Petition or be a terminal defect:

- (a) The child's name, date of birth and residence;
- (b) A statement of the Section of this Title which brings the child within the court's jurisdiction; and
- (c) A request that the Court adjudicate the child to be an abused or neglected child, according to applicable statutory definition and that appropriate proceedings be conducted regarding adjudication and disposition.
- (d) If necessary a request for an ex-parte order granting temporary custody.
- (e) The petition shall recite that the action is brought by the Tribe on behalf of the child.
- (f) The child's parents, guardian or custodian, as applicable, shall be included as named respondents in the petition.
- (g) A statement of facts supporting the allegation the child is abused or neglected. Affidavits of social workers of the Department of Child Protective Services, law enforcement officers or court service officers may be incorporated by reference as part of the petition.
- (h) Two or more children having one or more common parent, guardian or custodian and a common home environment may be included in the same petition.

A separate document shall accompany the Petition and shall include the following information: the names, residences and telephone numbers, of the child's parents, guardians and/or custodian, or, if not known, of the child's nearest known relative; and the name, address telephone number of the person or institution having physical custody of the child or children at the time of the filing of the Petition. This attached document may at the discretion of the Court be non-discoverable by any party, or attorney, except for the legal representative of CPS.

SECTION 12-6-9. Issuance of Protection orders as part of a abuse or neglect proceeding.

The Court may at its own discretion, or on application from CPS or its legal representative, the guardian ad litem, a CASA worker or one of the parents, guardian, custodian or child issue an ex-parte protection order under the Federal Violence Against Women Act (VAWA) or its successor legislation, and/or a restraining order issued under the contempt powers of the Court.

SECTION 12-6-10. Summons/Service of Process

Upon the filing of a Petition alleging abuse or neglect, the Court shall issue a summons stating the time, date, and place for the hearing on the petition that is directed to the child's parents, guardian or custodian, if any. If the petition declares the parties are unknown, then to "All Whom it May Concern" shall be sufficient to authorize the court to hear and determine the action as though the parties had been described by their proper names. The summons shall:

- (a) Require the persons named in it to appear, at a stated time, date and place and to respond to the petition and shall advise the persons named that failure to appear may be considered an admission to the allegations contained in the petition;
- (b) State that the persons named and the child who is the subject of the petition have the right to an attorney, at their own expense, pursuant to the Indian Civil Rights Act, at all stages in the proceedings;
- (c) A statement that termination of parental rights is a possible remedy under the proceedings;

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(d) Require the parents or the party having custody of the child to appear with the child at the time, date and place stated in the summons.

The summons shall be served in the same manner as personal service of summons according to Tribal Rules of Civil Procedure or by publication as provided in this Title not less than thirty (30) days before the date of the hearing on the petition and shall be served on the child's parents, guardian and/or custodian.

SECTION 12-6-11. Petition for Desertion.

The Tribal Prosecutor or other designated legal representative, or in the absence of the tribal prosecutor, the Department of Child Protective Services, may file with the clerk of courts a written petition alleging a child to be a child in need of care, as defined by Section 12-6-2 (i).

The petition shall include the following information if known by the party filing after due diligence has been employed to discover the information. Any deficiency in the initial information shall not invalidate the Petition or be a terminal defect:

- (a) The child's name, date of birth and residence;
- (b) A statement of the Section of this Title which brings the child within the court's jurisdiction; and
- (c) A request that the Court adjudicate the child to be an abused or neglected child, according to applicable statutory definition and that appropriate proceedings be conducted regarding adjudication and disposition.
- (d) If necessary a request for an ex-parte order granting temporary custody.
- (e) The petition shall recite that the action is brought by the Tribe on behalf of the child.
- (f) The child's parents, guardian or custodian, as applicable, shall be included as named respondents in the petition.
- (g) A statement of facts supporting the allegation the child is abused or neglected. Affidavits of social workers of the Department of Child Protective Services, law enforcement officers or court service officers may be incorporated by reference as part of the petition.

Two or more children having one or more common parent, guardian or custodian and a common home environment may be included in the same petition.

SECTION 12-6-12. Ex Parte Temporary Order of Custody and Limited Guardianship

(a) Upon the filing of a Petition under Section 12-6-11 above the Court may issue an ex-parte order of temporary custody vesting the temporary custody, care and control of the child(ren) with CPS for placement at their discretion.

(b) If a specific person is recommended in the Petition or attached documents the Court may issue a temporary limited guardianship to the named person on behalf of the child(ren) in order that the named person may have the limited authority to sign legal documents and seek medical custody on behalf of the child(ren).

(c) The Court at its discretion may order that the child(ren) not be removed from the jurisdiction of the Court without written permission of the Court.

(d) If custody is not placed with CPS under subsection (1) above, but instead a limited guardianship under subsection (2) above the Court may dismiss the Petition on its own motion if a subsequent civil custody or guardianship petition is subsequently filed and called for hearing.

(e) Unless the actions which necessitate the Petition under Section 12-6-11 above rises to the level of abandonment there shall be no filing with the Central Registry.

SECTION 12-6-13. Release of Information

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Upon receipt by the Department of Child Protection Services of a request showing that it is necessary for the individual to have information in the performance of official functions related to child abuse or neglect, the Department shall release records, files or other information to the following parties:

- (a) The tribal prosecutor or other appropriate legal counsel, law enforcement agencies, and child protective service workers investigating reports of known or suspected child abuse or neglect;
- (b) The attorney or guardian ad litem of the child who is the subject of the information;
- (c) Tribal institutions and agencies that have legal responsibility or authorization to care for, treat or supervise a child who is the subject of the information or report;
- (d) A licensed child/pediatric psychiatrist, psychologist or mental health counselor; and
- (e) A physician who has before him a child whom the physician reasonably believes may be abused or neglected.

SECTION 12-6-14. Confidentiality

(a) All investigative case records and files relating to reports of child abuse or neglect are confidential, and no disclosure of records, files or other information may be made except as authorized in this Title. Any person, who knowingly violates the confidential nature of the records, files or information shall be subject to punishment as provided for in this Code or any other policy, ordinance or rule of the Tribe.

(b) Information received by an authorized party pursuant to Sections 12-6-11, 12-6-5 and 12-6-6 shall be held confidential by the receiving party. However, the court may order the release of the information or any portion of it necessary for determination of an issue before the court.

(c) The privilege of confidentiality may not be claimed in any judicial proceeding involving an alleged abused or neglected child or resulting from the giving, or cause the giving, of a report concerning abuse or neglect of child pursuant to this Chapter.

(d) Any person who is found to have willfully violated Section (a) above shall be subjected to civil penalties that shall be a minimum of a \$100 fine and a maximum of \$500. Additionally, such violation shall be reported to the violator's employer and licensing agency if any. Additionally, on motion of the Tribe or other aggrieved party to the action from which the information was disclosed the Court may enjoin the violator from holding any position of employment that would allow access to such records for up to five years for a first violation or permanently for subsequent violations or a demonstration of an on going pattern of violations.

SECTION 12-6-15. Remedial Measures to Prevent Removal of Children from Their Home

Except as provided in Section 12-5-3, prior to the removal of an alleged or adjudicated abused or neglected child from the home of the child's parents, guardian or custodian, the Court shall make reasonable efforts to prevent or eliminate the need for removal of the child. Under any circumstance, other than an emergency, any party seeking to effect the removal of a child from the child's home for foster care placement or termination of parental rights must first satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family unit and that these efforts have proven unsuccessful.

SECTION 12-6-16. Standards for Removal/Foster Care Placements

A child may not be removed from the child's home and placed in foster care, except as provided in Section 12-5-3, until the court has made a judicial determination, supported by clear and convincing evidence, that the continued custody of the child by the child's parent, guardian or custodian is likely to result in serious emotional or physical harm to the child and that remedial measures under Section 12-5-11 have been attempted by the court and have proven unsuccessful.

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SECTION 12-6-17. Options of the Court Following Temporary Custody Hearing for Abused or Neglected Child

If the child is an alleged abused or neglected child, after the temporary custody hearing the court may:

- (a) Order the release of the child from temporary custody, either with or without restriction regarding the care or protection of the child; or
- (b) Continue the temporary custody under the terms and conditions for duration and placement that the court requires, including the placement of temporary custody of the child with the Department of Child Protection Services as a ward, in foster care or shelter. If temporary custody of the child is continued by the court, the court may provide for visitation of the child by the child's parents, guardian or custodian or family members in keeping with the best interests of the child.

SECTION 12-6-18. Termination of Parental Rights

(a) When an abused or neglected child has been in the custody of the Department of Child Protection Services without a court approved plan for long-term foster care and parental rights have not been terminated and it appears at a dispositional or review hearing:

- (1) That all reasonable efforts have been made to rehabilitate the family; and
- (2) That the conditions which led to the removal of the child still exist; and
- (3) There is little likelihood that those conditions will be remedied so that the child can be returned to the custody of the child's parent; and
- (4) Clear and convincing evidence exists that the custody of the child with the child's parent would likely result in serious emotional or physical harm to the child.

The court shall order that Child Protective Services or the attorney for the Department commence Termination of Parental Rights proceedings against one or both parents. The Proceeding shall be captioned as part of the ongoing juvenile proceeding under this Title, but shall require separate service of process. The Court shall hold an initial hearing with regards to the Termination of Parental Rights Proceeding, at which the parent(s) shall be advised of the effect of termination of parental rights, the rights afforded parent(s) in such proceedings which shall be identical to those in a criminal proceeding except that the clear and convincing evidence standard which shall be used in such proceedings. A termination of parental rights hearing shall be scheduled no less than thirty (30) and no more than ninety (90) days from the date of the initial hearing.

Upon entry of the final decree of disposition terminating the parental rights of one or both parents, the court shall award the Department of Child Protection Services or the Nebraska Department of Health and Human Services custody and guardianship of the child for the purpose of placing the child for adoption and authorizing any notice or consent of any parent or child. Upon entry of final decree of disposition terminating the parental rights of one parent, the court may leave the child in the custody of the remaining parent and end all proceedings.

(b) If the court does not find that good cause exists for termination of parental rights, the court shall make further disposition of the child as follows:

- (1) Return custody of the child to the child's parents, guardian or custodian, with or without supervision; or
- (2) Continue foster care placement of the child for a specified period of time, and if the child is sixteen (16) years of age or older, direct the Department of Child Protection Services to determine the services needed to assist the child to make the transition from foster care to independent living and, if appropriate, provide a plan for independent living for the child; or
- (3) Place the child in the custody of the Department of Child Protection Services or the Nebraska Department of Health and Human Services, a foster home or other child care facility for long-term foster care under a court approved plan, with or without guardianship of the child, and determine

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visitation rights of the child's parents, guardian or custodian. Under this subdivision, the court may retain jurisdiction of the action and proceedings for future consideration of termination of parental rights.

In no case may a child remain in foster care for a period in excess of eighteen (18) months without the court entering an order setting forth one of the above options.

SECTION 12-6-19. Voluntary Termination

A child's parent(s) may voluntarily consent to termination of parental rights. The consent shall be executed in writing and recorded in a hearing (which shall include a telephone hearing) in which the parent(s) shall acknowledge in writing and under oath that the terms and consequences of the consent were fully understood by the parent. The parent may withdraw consent at any time prior to the entry of a final decree of termination and request return of the child.

SECTION 12-6-20. Termination of Parental Rights Based on Abandonment

The court may terminate the parental rights of one or both parents upon a showing that the parent(s) have totally abandoned the child for at least six months and during this period the parents have made no attempt to resume physical custody of the child or make suitable arrangements for the child. Termination under these conditions shall be made in accordance with Section 12-6-18. Such an action may be commenced by the Tribe of its own initiative or at the direction of the Court or by any party that has standing to commence an action on behalf of a minor child and may be incorporated as part of any petition for adoption or permanent guardianship.

SECTION 12-6-21. Continuing Jurisdiction

In any action involving the termination of parental rights, the court shall have continuing jurisdiction of the action and of the child for purposes of reviewing the status of the child until the adoption is fully completed. The Department of Child Protection Services, the Nebraska Department of Health and Human Services, or any other party having custody or guardianship of the child pending adoption, may petition the court to review the status of the child at any time before the adoption of the child is completed. The court may issue any order or decrees necessary to protect the child's interests, to preserve the child's welfare, and to facilitate adoption of the child.

SECTION 12-6-22. Central Registry

A person who is the party alleged to have committed an action that necessitated a Petition under Section 12-6-2 above shall be listed on the Central Registry unless the filing is under Section 12-6-2(i) or is filed specifically as a no fault Petition.

CHAPTER 7. CHILDREN IN NEED OF SUPERVISION

SECTION 12-7-1. Purpose

The purpose of this Chapter is to establish an effective tribal system for children in need of supervision.

SECTION 12-7-2. Definition of Child in Need of Supervision

In this Chapter, the term "child in need of supervision" means:

- (a) Any child of compulsory school age as defined by Tribal law, who is habitually absent from school without legal excuse; or
- (b) Any child who has run away from home or is otherwise beyond the control of the child's parents, guardian or custodian; or
- (c) Any child whose behavior or condition endangers the child's own welfare or the welfare of others.

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(d) Any child who has been adjudicated to have committed a qualifying status offense or qualifying minor criminal or traffic offense.

SECTION 12-7-3. Status Offenses

A status offense is an action that is proscribed conduct only for those persons below a defined statutory age and is not considered criminal conduct for those above the statutory age.

(a) CURFEW VIOLATION.

(1) This Section shall replace and supercede the provisions of Section 5-4-105 in Title 5 entitled Curfew Violation.

(2) A minor under the age of eighteen (18) years of age is guilty of curfew violation if unless accompanied by a parent or guardian, or unless in attendance at or returning directly home from an organized school, church or Tribal function, he/she is away from his/her place of residence in a public place or a private place other than the place where he/she intends to spend the night with the permission of both his/her parent or guardian and the owner of such place, or is in a vehicle driving about on the public roadways within the boundaries of the Omaha Tribal Reservation, except as allowed above, after the hour of 10:00 p.m. local time except during that period of time that the local public school is in recess for summer vacation at which time the hour shall be 11:00 p.m. local time.

(3) For the purpose of this offense parent shall mean the biological, step or adoptive parent of such a child. This responsibility may be shared by more than one person without relieving any such "parent" of liability. A rebuttable presumption is hereby established for this offense that whosoever is the legal guardian of such a child shall be the "parent" for purposes of this Section.

(4) For the purpose of this offense the term guardian shall mean:

(A) Any person vested with legal guardianship of such child; or

(B) Any person who by virtue of their position of employment, position within the immediate family structure or position within the community is recognized as a person to whom parents may entrust the welfare of such a child;

(C) Such person is aware that they have been entrusted with the welfare of such a child.

(5) Curfew violation shall be enforced as follows:

(A) That in addition to any other rehabilitative effort the minor shall perform at least fifteen (15) hours of community service for the first violation in a twelve month span; and

(B) That in addition to any other rehabilitative effort the minor shall perform at least thirty (30) hours of community service for the first violation in a twelve month span; and

(C) That in addition to any other rehabilitative effort the minor shall perform at least thirty (30) hours of community service for each subsequent violation in a twelve month span, and that a responsible parent or legal guardian shall accompany the minor in the performance of his/her community service hours and shall toil alongside the child.

(b) Minor in Possession of an alcoholic beverage.

(1) For purposes of persons under the age of eighteen this Section shall replace and supercede Section 5-4-94 of Title 5 entitled Minor in Possession of an Alcoholic Beverage.

(2) Any person under the age of eighteen (18) who is in possession of any intoxicating beverage at any location within the boundaries of the Omaha Tribal Reservation shall be in violation of this Section; or

(3) Any person under the age of eighteen (18) who exhibits the characteristics an mannerisms of a person under the influence of alcohol at any location within the boundaries of the Omaha Tribal Reservation shall be in violation of this Section; or

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(4) Any person under the age of eighteen (18) who may be determined to have consumed any alcoholic beverage for any other reason than observance of a religious right at any location within the boundaries of the Omaha Tribal Reservation shall be in violation of this Section.

(c) Runaway.

(1) Any child who removes themselves from their residence without permission of a custodial parent, guardian or other custodian for a duration to include the hours of 10:00 p.m. until 6:00 a.m. the following morning shall be in violation of this Section; or

(2) Any child that removes themselves from their place of residence without permission of a custodial parent, guardian or other custodian with the intention, either stated or manifest by conduct, to remove themselves permanently or for a duration that would extend for a duration to include the hours of 10:00 p.m. until 6:00 a.m. the following morning shall be in violation of this Section.

(3) The Court may issue a warrant for the arrest of the child based upon the affidavit of a custodial parent, guardian or other custodian stating a violation of sections (a) or (b) above or an affidavit from a law enforcement officer stating equivalent facts.

(4) Any such warrant issued shall be entered on relevant data bases and have other relevant law enforcement agencies notified.

(5) Any minor detained by any outside law enforcement agency shall be considered to be a temporary ward of the Omaha Tribal Court and may be returned to the jurisdiction of the Omaha Tribal Court by any law enforcement personnel or Child Protective Services worker or other person so designated by the Omaha Tribal Court.

(d) Truancy.

(1) Any school age child who is not at school, inside his/her home or with a parent or guardian, to include all students that may be in a state of suspension and are not inside the family home or with a parent shall be in violation of this Section.

(2) It shall hereby be granted the authority to Omaha Tribal Law Enforcement, Omaha Tribal Child Protective Services, School Truant officers within the boundaries of the Omaha Tribal Reservation, and Omaha Tribal Housing Security to detain and transport them to the custody of the Community Services Coordinator, or other designated agency of individual, for supervision and direction until such time as the regularly scheduled school session ends. This is to constitute a lawful detention with no criminal or juvenile proceeding to follow, except that removing themselves from the custody of any of the above named persons or agency shall be considered an unlawful removal from lawful detention.

(3) For the above listed sections of this Title the following definitions will apply:

(A) "At school": This is to mean the school at which the child regularly attends, if a boarding school the juvenile may have a different school schedule and therefore the juvenile will not be considered truant under this Section.

(B) "Detention": This is not to be interpreted as arrest, but as lawfully having his/her freedom of movement and action determined by an authorized arm of the Omaha Tribal Government.

(C) "Custody": This is to mean the specific entity or person who has been charged with the oversight of the juvenile while they are under detention, as defined above.

(D) "Supervision": This is to mean the direction and oversight in specific tasks while the juvenile is in custody.

SECTION 12-7-4. Qualifying minor criminal offenses.

(a) Offenses classified as a Class C offenses under Titles 5 (Crimes) or 10 (Traffic Offenses) of this Code may be heard under the auspices of child in need of supervision proceedings with accompanying qualifying status offense(s).

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(b) The inclusion of a minor criminal offense shall be at the sole discretion of the Omaha Tribal Prosecutor or other appropriate legal counsel.

(c) The Omaha Tribal Prosecutor or other appropriate legal counsel shall look at the following factors to determine if a minor criminal offense shall be treated as a child in need of supervision or a youthful offender:

- (1) Whether the nature of the criminal offense is such that the status offense was a by product of the criminal activity or whether the criminal activity was incidental to the status offense.
- (2) The record of involvement with the Court and extent of law enforcement contacts with the minor child.
- (3) The nature of previous contacts with the Court that the responsible parent, guardian or custodian has had and whether the parent, guardian or custodian has demonstrated any tendency to either comply with Court orders or to disregard them.

SECTION 12-7-5. Standard of Proof

Any allegation made under this Chapter shall be required to be proven by the Tribal Prosecutor or other designated representative by presentation of evidence that proves the allegation by clear and convincing evidence.

SECTION 12-7-6. Petitions Alleging a Child to Be a Child in Need of Supervision.

(a) The tribal prosecutor or other designated legal representative, or in the absence of the tribal prosecutor, the Department of Child Protective Services, may file with the clerk of courts a written petition alleging a child to be a child in need of supervision.

(b) The petition shall include the following information if known by the party filing after due diligence has been employed to discover the information. Any deficiency in the initial information shall not invalidate the Petition or be a terminal defect:

- (1) The child's name, date of birth and parent, guardian or custodian;
- (2) A statement of the Section of this Title which brings the child within the court's jurisdiction; and
- (3) A request that the Court adjudicate the child to be a child in need of supervision, according to applicable statutory definition and that appropriate proceedings be conducted regarding adjudication and disposition.
- (4) The petition shall recite that the action is brought by the Tribe.
- (5) The child's parents, guardian or custodian, as applicable, shall be included as named respondents in the petition.
- (6) A brief concise statement of facts supporting the allegation the child is a child in need of supervision.

SECTION 12-7-7. Summons/Service of Process

(a) Upon the filing of a Petition alleging that a child is a child in need of supervision, the Court shall issue a summons stating the time, date, and place for the hearing on the petition that is directed to the child's parents, guardian or custodian, if any. If the petition declares the parties are unknown, then to "All Whom it May Concern" shall be sufficient to authorize the court to hear and determine the action as though the parties had been described by their proper names. The summons shall:

- (1) Require the persons named in it to appear, at a stated time, date and place and to respond to the petition and shall advise the persons named that failure to appear may be considered an admission to the allegations contained in the petition;

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- (2) State that the persons named and the child who is the subject of the petition have the right to an attorney, at their own expense, pursuant to the Indian Civil Rights Act, at all stages in the proceedings;
- (3) A statement that the parent, guardian or custodian is subject to order of the Court;
- (4) Require the parents or the party having custody of the child to appear with the child at the time, date and place stated in the summons.

(b) The summons shall be served in the same manner as personal service of summons according to Tribal Rules of Civil Procedure or by publication as provided in this Title not less than thirty (30) days before the date of the hearing on the petition and shall be served on the child's parents, guardian and/or custodian.

SECTION 12-7-8. Temporary Custody/Circumstances Requiring Release

A child alleged to be in need of supervision taken into temporary custody by a Tribal law enforcement officer shall be released to the child's parent, guardian or custodian unless the child's parent, guardian or custodian cannot be located. A child may not be placed in detention unless the court finds that the parents, guardian or custodian are not available or are not suitable to care for the child, and finds at least one of the following circumstances to exist:

- (a) The child has failed to comply with court services or a court ordered program;
- (b) The child has demonstrated propensity to run away from home, flee from court-ordered placement outside of the child's home or flee from agencies charged with providing temporary care for the child; or
- (c) The child is under court ordered detention; or
- (d) There are specific articulated circumstances that justify the detention for the protection of the child.
- (e) The shelter or detention provided shall be at the least restrictive alternative available.

SECTION 12-7-9. Release of Child in Need of Supervision Following Initial Hearing

In the case of an apparent, alleged or adjudicated child in need of supervision, after the initial hearing the court shall release the child from temporary custody to the child's parents, guardian or custodian, with or without condition or upon written promise of the child's parents, guardian or custodian regarding care or supervision of the child, unless the court finds that the child should continue to be held in temporary custody for any of the following reasons:

- (a) The child has failed to comply with a court ordered program; or
- (b) The child has a demonstrated propensity to run away from his home, from court ordered placement outside of his home, or from agencies charged with providing temporary care for the child; or
- (c) There are specific, articulated circumstances which justify the detention for the protection of the child from potentially immediate harm to the child's self or to others; or
- (d) Any other reason that the court deems necessary and in the best interest of the child.
- (e) Any child who has been adjudicated delinquent for any status offense or other criminal offense three or more times in any twelve month period. Qualifying offenses must result from separate incidents, multiple offenses or violations resulting from a single incident shall be considered a single offense for the purpose of this computation. The twelve month period shall be computed from the date of the respective violations and not the adjudications.

SECTION 12-7-10. Parental Responsibility.

(a) The Omaha Tribe of Nebraska hereby states that a major concern of the Tribe is parents, guardians and custodians of children maintaining a proper parental role and fulfilling their traditional and statutory roles with regards to the behavior, deportment and discipline of the children.

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(b) The parent, guardian or custodian of any child adjudicated under this Section shall be jointly liable to the Court for any fines and/or restitution ordered to an amount not to exceed \$1000.

(c) The parent, guardian or custodian any child who has been adjudicated delinquent for any status offense or other criminal offense three or more times in any twelve month period shall be subject to civil penalties under this Section of up to \$500 fine and or thirty days detention in an appropriate facility.

(d) Qualifying offenses must result from separate incidents, multiple offenses or violations resulting from a single incident shall be considered a single offense for the purpose of this computation. The twelve month period shall be computed from the date of the respective violations and not the adjudications.

(e) These provisions may be withheld or waived if the Youth Court Judge makes a specific finding that the child was adjudicated in need of supervision through no fault of the parent, guardian or custodian.

SECTION 12-7-11. Detention of Adjudicated Child in Need of Supervision.

(a) No child adjudicated a child in need of supervision shall be placed in detention or foster care without one of the following criteria being met:

(1) The child must have been adjudicated to have committed any status offense or other criminal offense three or more times in any twelve month period. Qualifying offenses must result from separate incidents, multiple offenses or violations resulting from a single incident shall be considered a single offense for the purpose of this computation. The twelve month period shall be computed from the date of the respective violations and not the adjudications.

(2) Habitually runaway, recalcitrant or unwilling to submit to parental supervision.

(3) In violation of a previous Court order, diversion or probation.

SECTION 12-7-12. Decree of Disposition

Upon adjudication as a child in need of supervision, the court shall enter a decree of disposition according to the least restrictive alternative available in the best interests of the child. The court decree shall contain any of the following:

(a) Placement of the child on probation;

(b) Placement of the child under protective supervision with the custody of one or both parents, guardian, custodian, relative or another suitable person under conditions imposed by the court;

(c) Placement of the child and/or the parent in a detention facility;

(d) Order the child, or the parents if the Court deems appropriate, to pay restitution for any damage done to property under conditions set by the court if payment can be enforced without serious hardship to the child;

(e) Placement of the child in a group care facility or a foster home under supervision of a court services officer;

(f) Order the child to be examined and treated at a place suited to the needs of the child;

(g) Order the child and/or the parent work with any tribally approved multidisciplinary or comprehensive program (example : the current CIT or Red Flag programs) and follow all of the recommendations of the program's evaluations.

(h) Order traditional/cultural forms of treatment or care which may be appropriate for the child's needs, only with the consent of the parent, guardian or custodian;

(i) Order the child, and/or the parent(s), to perform community service.

(j) Order the child and/or the parent to engage in any form of rehabilitative or family counseling it deems necessary.

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(k) Order the child and/or the parent to work with any tribal program or outside agency the Court deems necessary to benefit the child.

(l) Emancipate the child.

The terms and conditions of probation and the progress of each child placed on probation shall be reviewed at least once every six (6) months. The court may release a child from probation or modify the terms and conditions of the child's probation at any time. Any child who has satisfactorily complied with the terms, conditions and duration of probation shall be released from probation.

SECTION 12-7-13. Probation Officers

Any child who has been adjudicated as a minor in need of supervision may be placed under the supervision of a probation officer.

SECTION 12-7-14. Revocation of Probation

The following provisions apply when a petition is filed alleging that a child has violated the terms and conditions of probation:

(a) The court shall set a hearing on the alleged violation and shall give five (5) days notice to the child, or to the child's parents, guardian or custodian.

(b) The child and the child's parents, guardian or custodian shall be given a written statement concerning the alleged violation;

(c) If the court finds by preponderance of the evidence that the child violated the terms and conditions of probation, the court may modify the terms and conditions of probation, revoke probation or take other action permitted by this Chapter, according to the least restrictive alternative which is in the best interests of the child, the public and the Tribe;

(d) If the court finds that the child did not violate the terms and conditions of probation as alleged, the court shall dismiss the proceedings and continue the child on probation under the terms and conditions previously prescribed.

CHAPTER 8. DELINQUENCY PROCEEDINGS FOR YOUTHFUL OFFENDERS

SECTION 12-8-1. Purpose

The purpose of this Chapter is to establish an effective tribal system for adjudicating as delinquent and rehabilitating youthful offenders while protecting the Tribe and the resident communities from the actions of these delinquent children.

SECTION 12-8-2. Definitions

(a) Any child who is alleged to have committed an offense that would be punishable by fine or incarceration as a criminal or traffic offense under the appropriate Titles of this code if committed by an adult is deemed a youthful offender.

(b) Any child who adjudicated to have committed an offense that would be punishable by fine or incarceration as a criminal or traffic offense under the appropriate Titles of this code if committed by an adult is deemed a juvenile delinquent.

SECTION 12-8-3. Joinder with a Petition Alleging the Child to Be a Child in Need of Supervision.

(a) The Tribal Prosecutor, or other designated legal representative shall when appropriate join a Petition alleging the child to be a child in need of supervision to a Juvenile Delinquency petition and both proceedings shall be heard simultaneously if the incident in question is the same in both Petitions.

(b) The failure to join shall waive any status offenses alleged under Chapter 7 of this Title.

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(c) The Petitions shall be heard simultaneously, but shall require separate factual findings and decrees and shall maintain separate case numbers.

SECTION 12-8-4. Petitions Alleging a Child to be a Child in Need of Supervision.

The tribal prosecutor or other designated legal representative, may file with the clerk of courts a written petition alleging a child to be juvenile delinquent.

The petition shall include the following information if known by the party filing after due diligence has been employed to discover the information. Any deficiency in the initial information shall not invalidate the Petition or be a terminal defect:

- (a) The child's name, date of birth and parent, guardian or custodian;
- (b) A statement of the Section of this Title which brings the child within the court's jurisdiction; and
- (c) A request that the Court adjudicate the child to be a juvenile delinquent, according to applicable statutory definition and that appropriate proceedings be conducted regarding adjudication and disposition.
- (d) The petition shall recite that the action is brought by the Tribe.
- (e) A statement that the maximum penalty available under this Title is detention until the juvenile reaches the age of twenty-one (21) years of age and/or a \$500 fine.
- (f) A brief concise statement of facts supporting the allegation the child is juvenile delinquent.

SECTION 12-8-5. Summons/Service of Process

Upon the filing of a Petition alleging that a child is a child in need of supervision, the Court shall issue a summons stating the time, date, and place for the hearing on the petition that is directed to the child's parents, guardian or custodian, if any. The summons shall:

- (a) Require the persons named in it to appear, at a stated time, date and place and to respond to the petition and shall advise the persons named that failure to appear may be considered contempt of Court and that a arrest warrant may issue for either the child the parent, guardian or custodian or both;
- (b) State that the persons named and the child who is the subject of the petition have the right to an attorney, at their own expense, pursuant to the Indian Civil Rights Act, at all stages in the proceedings
- (c) Require the parents or the party having custody of the child to appear with the child at the time, date and place stated in the summons.

The summons shall be served in the same manner as personal service of summons according to Tribal Rules of Civil Procedure.

SECTION 12-8-6. Standard of Proof

Any allegation made under this Chapter shall be required to be proven by the Tribal Prosecutor or other designated representative by presentation of evidence that proves the allegation beyond a reasonable doubt.

SECTION 12-8-7. Procedural Rules.

Except as detailed elsewhere in this Title all rules of Criminal Procedure shall be used and applied to Delinquency Proceedings including rules of discovery and appeal.

SECTION 12-8-8. Detention pending Initial Hearing

(a) A child alleged to be a juvenile delinquent taken into temporary custody by a Tribal law enforcement officer shall be released to the child's parent, guardian or custodian unless the child's parent, guardian or custodian cannot be located or at least one of the following circumstances exist:

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- (1) The child is accused of a crime that if committed by an adult would be a Class A offense.
- (2) The child has demonstrated propensity to run away from home, flee from court-ordered placement outside of the child's home or flee from agencies charged with providing temporary care for the child; or
- (3) The child is under court ordered detention; or
- (4) There are specific articulated circumstances that justify the detention for the protection of the child.
- (5) There are specific articulated circumstances that justify the detention of the juvenile for the protection of the Omaha Tribe its resident communities or those persons residing within the boundaries of the Omaha Tribal Reservation.

(b) If one of these circumstances exist law enforcement or detention personnel shall contact the Tribal Prosecutor or other designated legal representative, in order that he/she may make application directly to the Youth Court Judge for an order/telephonic order directing that the youthful offender be detained pending an initial hearing, or if the Tribal Prosecutor is unavailable the law enforcement or detention personnel may make application directly to the Youth Court Judge.

SECTION 12-8-9. Release of Youthful Offender Following Initial Hearing

In the case of a youthful offender, after the initial hearing the court shall release the child from temporary custody to the child's parents, guardian or custodian, with or without condition, upon written promise of the child's parents, guardian or custodian regarding care or supervision of the child, or with a reasonable bond, unless the court finds that the child should continue to be held in temporary custody for any of the following reasons:

- (a) The child has failed to comply with a court ordered program; or
- (b) The child has a demonstrated propensity to run away from his home, from court ordered placement outside of his home, or from agencies charged with providing temporary care for the child; or
- (c) There are specific, articulated circumstances which justify the detention for the protection of the child from potentially immediate harm to the child's self or to others; or
- (d) Any other reason that the court deems necessary and in the best interest of the child; or
- (e) Any child who been adjudicated delinquent for any status offense or other criminal offense three or more times in any twelve month period. Qualifying offenses must result from separate incidents, multiple offenses or violations resulting from a single incident shall be considered a single offense for the purpose of this computation. The twelve month period shall be computed from the date of the respective violations and not the adjudications.

SECTION 12-8-10. Parental Responsibility.

(a) The Omaha Tribe of Nebraska hereby states that a major concern of the Tribe is parents, guardians and custodians of children maintaining a proper parental role and fulfilling their traditional and statutory roles with regards to the behavior, deportment and discipline of the children.

(b) The parent, guardian or custodian of any child adjudicated under this Section shall be jointly liable to the Court for any fines and/or restitution ordered to an amount not to exceed \$1000.

(c) The parent, guardian or custodian of any juvenile delinquent after a separate finding by clear and convincing evidence that the parents actions contributed directly to the offense or that was the result of gross negligence on the part of the parent, guardian or custodian in fulfilling their traditional parental responsibility shall be subject to civil penalties under this Section of up to \$500 fine and/or thirty days detention in an appropriate facility.

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(1) These may necessitate a separate proceeding against the parent, guardian or custodian; however, the separate proceeding shall be under the auspices of the Delinquency Petition and shall be so captioned and maintained.

(d) The parent, guardian or custodian of any child who has been adjudicated delinquent for any status offense or other criminal offense three or more times in any twelve month period shall be subject to civil penalties under this Section of up to \$500 fine and/or thirty days detention in an appropriate facility.

(e) Qualifying offenses must result from separate incidents, multiple offenses or violations resulting from a single incident shall be considered a single offense for the purpose of this computation. The twelve month period shall be computed from the date of the respective violations and not the adjudications.

(f) These provisions may be withheld or waived if the Youth Court Judge makes a specific finding that the child was adjudicated delinquent through no fault of the parent, guardian or custodian.

SECTION 12-8-11. Detention of Juvenile Delinquent Pending Dispositional Hearing.

(a) No juvenile delinquent shall be placed in detention or foster care pending disposition without one of the following criteria being met:

(1) That the juvenile delinquent is a risk to reoffend and/or represents a risk to the Omaha Tribe, its resident communities or persons residing within the boundaries of the Omaha Tribal Reservation.

(2) That the juvenile delinquent is likely to engage in behaviors and activities that are likely to result in serious harm to him/herself.

(3) Habitually runaway, recalcitrant or unwilling to submit to parental supervision.

(4) In violation of a previous Court order, diversion or probation.

SECTION 12-8-12. Pre-Dispositional Report

(a) The Court shall order whatsoever performs evaluations, examinations or other screening or risk assessment analysis as it feels necessary to be completed prior to the dispositional hearing and submitted to either the Juvenile probation officer or directly to the Tribal Prosecutor or other designated legal counsel. This shall be binding and enforceable by the contempt powers of the Court upon all tribal employees, contractors or other agencies that provide services directly to the tribe or through the B.I.A.

(b) The Juvenile Probation officer shall prepare a written synopsis of contributing factors, past contacts with the Court and overall recommendations for disposition.

(c) This report shall be available for review by all parties and the Court not less than five (5) days prior to a dispositional hearing.

SECTION 12-8-13. Decree of Disposition

(a) After adjudication as a juvenile delinquent and subsequent investigation and analysis under Section 12-8-12 above, the court shall enter a decree of disposition according to the least restrictive alternative available in the best interests of the child. The court decree shall contain any of the following:

(1) Placement of the child on probation;

(2) Placement of the child under protective supervision with the custody of one or both parents, guardian, custodian, relative or another suitable person under conditions imposed by the court;

(3) Placement of the child and/or the parent in a detention facility;

(4) Order the child, or the parents if the Court deems appropriate, to pay restitution for any damage done to property under conditions set by the court if payment can be enforced without serious hardship to the child;

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(5) Placement of the child in a group care facility or a foster home under supervision of a court services officer;

(6) Order the child to be examined and treated at a place suited to the needs of the child;

(7) Order traditional/cultural forms of treatment or care which may be appropriate for the child's needs, only with the consent of the parent, guardian or custodian;

(8) Order the child, and/or the parent(s), to perform community service.

(9) Order the child and/or the parent to engage in any form of rehabilitative or family counseling it deems necessary.

(10) Order the child and/or the parent to work with any tribal program or outside agency the Court deems necessary to benefit the child.

(11) Emancipate the child.

(12) Order the child to be made a ward of the Omaha Tribal Court, one of its entities or any other outside governmental or quasi-governmental agency or institution in order to provide services or resources not otherwise available to the Tribe, or for financial reasons that would render those same services if provided by the Tribe unreasonably burdensome financially.

(b) The terms and conditions of probation, detention or foster care and the progress of each child placed on probation, detention or foster care shall be reviewed at least once every six (6) months. The court may release a child or modify the terms and conditions of the child's dispositional decree at any time. Any child who has satisfactorily complied with the terms, conditions and duration of the decree shall be released from the jurisdiction of the Court.

SECTION 12-8-14. Probation Officers

Any child who has been adjudicated as juvenile delinquent may be placed under the supervision of a probation officer.

SECTION 12-8-15. Revocation of Probation

The following provisions apply when a petition is filed alleging that a child has violated the terms and conditions of probation:

(a) The court shall set a hearing on the alleged violation and shall give five (5) days notice to the child, or to the child's parents, guardian or custodian.

(b) The child and the child's parents, guardian or custodian shall be given a written statement concerning the alleged violation;

(c) If the court finds by preponderance of the evidence that the child violated the terms and conditions of probation, the court may modify the terms and conditions of probation, revoke probation or take other action permitted by this Chapter, according to the least restrictive alternative which is in the best interests of the child, the public and the Tribe;

If the court finds that the child did not violate the terms and conditions of probation as alleged, the court shall dismiss the proceedings and continue the child on probation under the terms and conditions previously prescribed.

CHAPTER 9. TRANSFER AND EMANCIPATION PROCEDURES

SECTION 12-9-1. Transfer Procedures.

In any Delinquency proceeding under Chapter 8 of this Title the Tribal Prosecutor or other designated legal representative, may request that a specific case be transferred from Omaha Tribal Youth Court to the Criminal Court of the Omaha Tribe in order that a youthful offender may be tried as an adult criminal defendant

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- (a) In order for such a transfer to be made the Tribe must give written notice, via motion, oral notice, followed by a written motion, at or before the initial hearing in the delinquency proceeding.
- (b) The youthful offender is entitled to a hearing on the matter with at least five (5) days written notice of the motion; however, the youthful offender may waive such notice requirements and agree to the transfer.
- (c) The Tribe must provide clear and convincing evidence to the Court of one or more of the following:
 - (1) That the youthful offender is within 120 days of the date of his or her eighteenth (18th) birthday; or
 - (2) That the youthful offender is at least sixteen (16) years of age and the nature or gravity of the crime alleged is such that they violate the spirit of the rehabilitative goals of the Youth Court and the interests of justice are furthered by the case being transferred to adult court.

SECTION 12-9-2. Procedures for Emancipation.

- (a) Through a proceeding under Chapters 6 or 7 of this Title the Court may through its own motion or as part of a permanency plan after extended foster care placement may order emancipation, or that the requirements for emancipation be completed.
- (b) A minor who meets the requirements in Section 12-9-3 below may petition the Court for emancipation. The Court may upon a finding by clear and convincing evidence that the requirements of Section 12-9-3 below have been met and that emancipation is in the best interest of the minor child.

SECTION 12-9-3. Requirements for Emancipation.

- (a) That the minor be at least sixteen years of age.
- (b) That the minor has been in out of home placement for a least one year as a result of an adjudication under Chapter 6 or 7 of this Title.
- (c) That the minor cannot or will not remain in the parental home.
- (d) That returning to the parental home or other placement would be injurious to the minor child.
- (e) That the minor child has successfully completed an independent living course, or in the absence of the availability of such a program the minor must otherwise demonstrate to the Court or such person or agency designated by the Court independent living skills such that the minor can function independently as an adult.

SECTION 12-9-4. Parties to the Proceeding.

In any action commenced under Sections 12-9-2 or 12-9-3 above the following persons or parties shall receive notice and be granted leave to intervene:

- (a) Tribal Prosecutor on behalf of the Omaha Tribe
- (b) Omaha Tribal CPS
- (c) The biological parents if their parental rights remain intact.
- (d) Any custodian or guardian of the minor child.
- (e) Any such other party that the Court deems a necessary party to the action.

History: Omaha Tribal Council Resolution No. 02-116 (8-27-02) superseded Resolution No. 94-9 (4-22-94). Resolution 80-03 (10-24-79) enacted the original Youth Code by adopting the Model Juvenile Code prepared by the American Indian Law Center.

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CHAPTER 10. ADOPTION

Source: Omaha Tribal Council Ordinance No. 04-09 (10-30-03)

SECTION 12-10-2. Jurisdiction Over Adoption

The Omaha Youth Court shall have full original jurisdiction in adoption matters where the person to be adopted is the child of at least one Indian parent and the child lives or is domiciled within the Reservation or has been placed outside the Reservation by order of the Omaha Youth Court or as to any proceeding covered by 25 U.S.C. § 1901, et seq., of the Indian Child Welfare Act of 1978.

SECTION 12-10-3. Who May Adopt

(a) Any minor child subject to the jurisdiction of the Tribe may be adopted by any adult person, Indian or non-Indian, as hereinafter provided.

(b) A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife, nor can a married woman, not lawfully separated from her husband, adopt a child without the consent of her husband, if the spouse not consenting is legally capable of giving such consent.

(c) A person adopting a child must be at least ten years older than the child adopted.

(d) In any adoption involving an Indian child, preference shall be given to Indian adoptive parents, and as between Indian adopted parents, preference shall be given to members of the Omaha Tribe of Nebraska, and as between Omaha Tribal members, preference shall be given to residents of the Omaha Reservation.

SECTION 12-10-4. Consent for Adoption

(a) No consent to adoption shall be required from a parent or parents whose parental rights have been terminated by a court of competent jurisdiction.

(b) A child cannot be adopted without the consent of both parents, if living, provided, however, that the Court can allow the adoption of a legitimate child without the consent of a parent whose whereabouts are unknown after a reasonable search and who has deserted the family for a period of four (4) years without in that time ever contacting the family.

(c) A child deserted by its parent or surviving parent may be adopted without the consent of its parents upon a finding by the Court that the child has in fact been deserted by his parents or surviving parent for a period of four (4) years and that the identity of the parents is unknown after reasonable investigation.

(d) The Court shall not find that any of the requirements of parts (b) or (c) have been met without first obtaining a report from the Omaha Child and Family Services Program, the Tribal Enrollment Office and the Winnebago Agency, BIA as to each of such requirements.

(e) The consent of a child over the age of twelve years is necessary to its adoption.

(f) A child who has a guardian of its person other than a parent cannot be adopted without the consent of such guardian provided, however, that an adoption of such a child may be accomplished without such consent if the Court finds that the adoption will be in the child's best interest.

(g) Consent of a parent shall be taken in the presence of the Court and shall be accomplished by signing a consent form to be provided by the Court that explains the consequences of consenting the adoption. The Court shall not accept any parental consent form that is not personally signed in the presence of the Judge. The Court may condition the Court's acceptance of the parents' consent to adoption on any suitable waiting period, on parent participation in a counseling or rehabilitation program or on such other reasonable conditions as the Court may establish.

(h) A consent to adoption may be withdrawn only prior to entry of an Order of Adoption except as otherwise provided in the Indian Child Welfare Act of 1978.

SECTION 12-10-5. Petition to Adopt.

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A person or persons wishing to adopt a child through the Tribal Juvenile Court must file a petition, verified under oath, which must contain the following information:

- (a) The full names, address, and ages of the adopting parents, plus the names and ages of all other children living in their household, if any;
- (b) The full name, residence, sex and birthdate of the child whose adoption is sought, plus documentary proof of the child's date and place of birth, if available, and his tribal enrollment status;
- (c) If the petitioner claims that parental rights have been terminated, a certified copy of the decree terminating parental rights must be attached to the Adoption Petition. Otherwise, the petition must allege parental consent or desertion under § 12-10-3.
- (d) A full description and statement of value of all property owned or possessed by the child;
- (e) A statement by the adopting parents that it is their desire to adopt the child and to establish the relation of parent and child with the adopted child, and that they will protect and care for the child to the best of their ability if the adoption is granted.

SECTION 12-10-6. Investigation

After the filing of the petition for adoption, the Court may request the assistance of Tribal, Federal, or State officials or agencies to inquire into and report in writing to the Court on suitability of the child for adoption, and the financial, moral, and physical fitness and general background of the adoptive parents and their home, together with a recommendation regarding the proposed adoption.

SECTION 12-10-7. Adoption Hearing.

Within thirty (30) days after the written investigation report is received or within a reasonable time, the Court shall fix a time for hearing on the petition for adoption. The adoptive parent or parents and the adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption shall be duly notified if possible and may appear or be represented by a spokesperson authorized to represent them for the purpose of adoption. The Judge shall examine all persons appearing separately, and if satisfied as to the stability of the child for adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and that the best interests of the child will be promoted by the adoption, may enter a final decree of adoption, or may place the child in the legal custody of the petitioners for a period of not more than six months prior to entering a final decree of adoption, or if the Court is satisfied that the adoption petition will be denied, the child's guardian shall be instructed to arrange other suitable care for the child, and the court may request Tribal services to assist in the placement and care of the child.

SECTION 12-10-8. Summons.

- (a) At least thirty (30) days prior to the adjudicatory hearing, the Youth Court shall issue summons to:
 - (1) The minor; and
 - (2) The minor's parent, guardian or custodian; and
 - (3) Any person the Youth Court believes necessary for the proper adjudication of the hearing;
 - (4) Any person the minor believes necessary for the proper adjudication of the hearing.
- (b) The summons shall contain the name of the Court; the title of the proceedings; and the date, time and place of the hearing.
- (c) A copy of the petition shall be attached to the summons issued pursuant to subsection (a) (1) (2) of this section
- (d) The summons shall be delivered personally by a law enforcement officer or appointee of the Omaha Youth Court. If the summons cannot be delivered personally, the court may deliver the sum

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registered mail. If the summons cannot be delivered personally or by registered mail, the summons may be by publication.

(e) If a person who has been issued a summons fails to appear at the hearing that person shall be held in contempt of court.

SECTION 12-10-9. Adoption Records.

All records, reports, proceedings, and orders in adoption cases are confidential and permanent records of the Court shall not be available for release to or inspection by the public. Information contained in such records may be released upon petition to the Court by the adopted person after reaching legal majority, or otherwise upon order of the Court upon good and sufficient cause shown.

SECTION 12-10-10. Contents of Adoption Order.

The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings. Within thirty day (30) days after the final decree of adoption has been entered by the Court, the Division of Vital Statistics of the Omaha Board of Health shall be notified by the Clerk of the Court that the adoption has taken place, giving the full name, sex, birthdate, names of natural parent(s) and full names of adoptive parent(s) so that a new record of birth in the new name and with the name or names of the adopting parents is recorded, and provided with a certified true and correct copy of the final decree of adoption.

CHAPTER 11. COMPULSORY EDUCATION

SECTION 12-11-1. Age; Attendance Required; Exceptions

- (a) For purposes of this section, a child is of mandatory attendance age if the child (a) will reach six years of age prior to January 1 of the then-current school year and (b) has not reached eighteen years of age.
- (b) Except as provided in subsection (c) of this section, every person residing in the Umonhon Nation Public School District who has legal or actual charge or control of any child who is of mandatory attendance age or is enrolled in a public school shall cause such child to enroll in, if such child is not enrolled, and attend regularly a school, each day that such school is open and in session, except when excused by school authorities or when illness or severe weather conditions make attendance impossible or impracticable.
- (c) Subsection (b) of this section does not apply in the case of any child who:
- (1) Has obtained a high school diploma by meeting the graduation requirements; or
 - (2) Has reached sixteen years of age and has been withdrawn from school in compliance with state and tribal laws.

SECTION 12-11-2. Nonattendance Lists; Transmission to Enforcement Officers

(a) The superintendent or administrator of the school district, upon the receipt of a list of enrolled students, shall (1) compare the names of the children enrolled with the last census report on file in his or her office from such district, (2) prepare a list of all children resident in such district under his or her jurisdiction who are not attending school as provided in section 12-10-1, and (3) transmit the list to the truancy officer or officers in such district whose duty it is to enforce the provisions of such section.

SECTION 12-11-3. Nonattendance; School District; Duties; Remedial Services; Enforcement

(a) Any superintendent, principal, teacher, or member of the school board who knows of any violation of section 12-10-1 on the part of any child of school age, his or her parent, the person in actual or legal control of such child, or any other person shall within three days report such violation to the truancy officer of the school, who shall investigate the case. When of his or her personal knowledge, by report or complaint

OMAHA TRIBE OF NEBRASKA

P. O. Box 368
Macy, Nebraska 68039

EXECUTIVE OFFICERS
Rodney Morris, Chairman
Doran Morris, Jr., Vice-Chairman
Tille Aldrich, Treasurer
Gwen Porter, Secretary



TRIBAL ADMINISTRATION

(402) 837-5391
FAX (402) 837-5308

MEMBERS
Jeffrey S. Miller, Member
Mitchell Parker, Member
Forrest Aldrich, Jr., Member

ORDINANCE

OMAHA TRIBAL COUNCIL

No. 13-56

Adopting Chapter 10 to Title 12 of Omaha Tribal Code Governing Compulsory Education in the Exterior Boundaries of the Omaha Reservation

WHEREAS, the Omaha Tribe of Nebraska is a federally recognized Indian tribe organized under a constitution and bylaws approved by the Secretary of Interior on April 30, 1936, pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934; and,

WHEREAS, pursuant to Article III, Section 1, of the Constitution of the Omaha Tribe of Nebraska, the governing body of the Omaha Tribe shall be known as the Tribal Council; and,

WHEREAS, pursuant to Article IV, Section 1(j) of the Constitution of the Omaha Tribe of Nebraska, the Tribal Council has the authority to safeguard, promote, and enforce the economy and general welfare of the tribe and the Omaha Indian Reservation and to regulate all manner of trade and commerce; and,

WHEREAS, the Tribal Council finds ensuring the complete education of Omaha youth is of paramount importance to preparing the Omaha Tribe for a successful future; and,

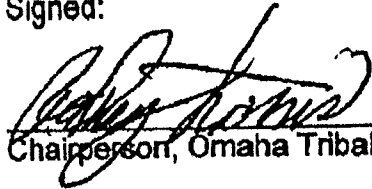
WHEREAS, the Tribal Council finds that current tribal law is inadequate to meet this goal and that too many Omaha youth do not receive the benefit of a complete education in the Umo'ho Nation Public School; and

WHEREAS, the Tribal Council has determined that it is in the best interest of the Omaha Tribe of Nebraska to adopt Chapter 10 to Title 12 of the Omaha Tribal Code governing compulsory education.

QUESTION: Mitchell Parker

Dated: April 25, 2013.

Signed:



Chairperson, Omaha Tribal Council



Secretary, Omaha Tribal Council

Reviewed:

BIA Superintendent, Winnebago Agency

OMAHA TRIBAL CODE (2013)

from any resident of the district, or by report or complaint as provided in this section, the truancy officer believes that any child is unlawfully absent from school, the truancy officer shall immediately investigate.

(b) The school district shall have a written policy on excessive absenteeism developed in collaboration with the tribal prosecutor. The policy shall include a provision indicating how the school district and the tribal prosecutor will handle cases in which excessive absences are due to documented illness that makes attendance impossible or impracticable, and the policy shall state the number of absences or the hourly equivalent upon the occurrence of which the school shall render all services in its power to compel such child to attend some public, private, denominational, or parochial school, which the person having control of the child shall designate, in an attempt to address the problem of excessive absenteeism. The number of absences in the policy shall not exceed five days per quarter or the hourly equivalent. The school district may use excused and unexcused absences for purposes of the policy. The policy shall also require that the parents or the person in actual or legal control of such child assist the child with make-up work for any absence. Such services shall include, but need not be limited to:

(1) One or more meetings between a school attendance officer, school social worker or the school principal or a member of the school administrative staff designated by the school administration if such school does not have a school social worker, the child's parent or guardian, and the child, if necessary, to report and to attempt to solve the problem of excessive absenteeism;

(2) Educational counseling to determine whether educational changes, including, but not limited to, enrolling the child in an alternative education program that meets the specific educational and behavioral needs of the child, would help solve the problem of excessive absenteeism;

(3) Educational evaluation, which may include a psychological evaluation, to assist in determining the specific condition, if any, contributing to the problem of excessive absenteeism, supplemented by specific efforts by the school to help remedy any condition diagnosed; and

(4) Investigation of the problem of excessive absenteeism by the school social worker, or if such school does not have a school social worker, by the school principal or a member of the school administrative staff designated by the school administration, to identify conditions which may be contributing to the problem. If services for the child and his or her family are determined to be needed, the school social worker or the school principal or a member of the school administrative staff performing the investigation shall meet with the parent or guardian and the child to discuss any referral to appropriate community agencies for economic services, family or individual counseling, or other services required to remedy the conditions that are contributing to the problem of excessive absenteeism.

(5) The truancy officer shall report the student to the tribal prosecutor after twenty days or the hourly equivalent of unexcused absence. In the case excessive absenteeism begins after a school year starts or shortly after a student is enrolled, the truancy officer shall make contact with the parent or the person in actual or legal control of such child after five absences. This may include a visit to the home accompanied by Tribal Police. If the child is absent more than twenty days per year or the hourly equivalent and all of the absences are due to documented illness that makes attendance impossible or impracticable or are otherwise excused by school authorities, the truancy officer may report such information to the tribal prosecutor. If the child is absent more than twenty days per year or the hourly equivalent and any of such absences are not excused, the truancy officer shall file a report with the tribal prosecutor on a form which includes the following two statements, one of which must be designated by the school representative signing the report: (a) The school representative requests additional time to work with the student prior to intervention by the tribal prosecutor; and (b) the school representative believes that the school has used all reasonable efforts to resolve the student's excessive absenteeism without success and recommends intervention by the tribal prosecutor. If further action is necessary to address the child's attendance, the initial meeting between the parent or guardian of the child, the school, and the tribal prosecutor shall be at a location determined by the school.

(c) Nothing in this section shall preclude the tribal prosecutor from being involved at any stage in the process to address excessive absenteeism.

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SECTION 12-11-4. Withdrawal of Child from School; Exempt from Mandatory Attendance; Withdrawal Form

(a) A person who has legal or actual charge or control of a child who is at least sixteen years of age but less than eighteen years of age may withdraw such child from school before graduation and be exempt from the mandatory attendance requirements of section 12-10-1 if a withdrawal form is signed by the superintendent of the school district, provided that withdrawal is permitted by sections 79-201 to 79-210 of the Nebraska Revised Statutes.

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OMAHA TRIBE OF NEBRASKA

Executive Officers

Michael D. Wolfe, Chairman
Orville Cayou, Vice-Chairman
Alan Harlan, Treasurer
Clifford Wolfe, Jr., Secretary



Members

Jeffrey S. Miller
Jessica Webster-Valentino
Rodney Morris

RESOLUTION

~~OMAHA TRIBAL COUNCIL~~

No. 17-94

Adopting into the ONT Code a "Grandparent's Rights" Section

WHEREAS, the Omaha Tribe of Nebraska is a federally recognized Indian tribe organized under a constitution and bylaws approved by the Secretary of Interior on April 30, 1936, pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934; and,

WHEREAS, pursuant to Article III, Section 1 of the Constitution of the Omaha Tribe of Nebraska, the governing body of the Omaha Tribe shall be known as the Tribal Council; and,

WHEREAS, pursuant to Article IV, Section 1(k) of the Constitution of the Omaha Tribe of Nebraska, the Tribal Council has the authority to safeguard, promote, and enforce the peace, economy, safety, law and order, and general welfare of the Tribe and the Omaha Indian Reservation; and,

WHEREAS, pursuant to Article IV, Section 1(m) of the Constitution of the Omaha Tribe of Nebraska, the Tribal Council has the authority to adopt resolutions regulating the procedure of the Tribal Council itself and of other ; and,

WHEREAS, the Tribal Council finds that grandparents do not have the right to visit grandchildren; and,

WHEREAS, the Tribal Council finds that it may be in the best interest of tribal families to have the right to visit families if it is in the best interest of the family, including children; and,

WHEREAS, the Tribal Council has determined that it is in the best interest of the Omaha Tribe of Nebraska to codify visitation rights to grandparents in the interest of the general welfare.

Address P.O. Box 368 Macy, Nebraska 68037 • Phone (402) 837-5391 • Fax (402) 837-5308



NOW THEREFORE BE IT RESOLVED:

A Grandparent shall be entitled to reasonable visitation with his or her minor grandchild unless it is shown by clear and convincing evidence that visitation is not in the best interest of the minor child.

BE IT FINALLY RESOLVED:

These rights shall be codified in the Omaha Tribal Code Under Title 12. Omaha Youth as Chapter 12. Grandparent's Rights

CERTIFICATION

This will certify that the foregoing resolution was considered at a meeting of the Tribal Council of the Omaha Tribe of Nebraska, duly called and held on Sept. 12, 2017, and was adopted by a vote of 3 FOR, 0 AGAINST and 3 NOT VOTING OR ABSENT with the Chairperson not voting. A quorum of 5 was present.

INTRODUCED BY: Orville Cayon
MOTION: Alan Hartan
SECOND: Rodney Morris

Dated: 9/12/17.

Signed:

Michael D. Wolfe
Chairman Michael D. Wolfe
Omaha Tribal Council

Clifford Wolfe Jr.
Clifford Wolfe Jr, Secretary
Omaha Tribal Council



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DRAFT CODE REGARDING GRANDPARENTS RIGHTS Under Title 12 Omaha Youth

CHAPTER 12. GRANDPARENT'S RIGHTS

SECTION 12-12-1. Visitation Rights

- (a) A Grandparent shall be entitled to reasonable visitation with his or her minor grandchild unless it is shown by a preponderance of the evidence that visitation is not in the best interest of the minor child.

